IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 47

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SEATRAIN LINES, INC., *et al.*,
Appellants,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, *et al.*

No. 48

THE PENNSYLVANIA RAILROAD COMPANY, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, SEATRAIN LINES, INC., *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR FORREST S. SMITH, TRUSTEE OF HOBOKEN MANUFACTURERS RAILROAD COMPANY, NEW ORLEANS AND LOWER COAST RAILROAD COMPANY, AND SEATRAIN LINES, INC., APPELLANTS-APPELLEES

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These are two appeals to review different phases of a decision and decree of a statutory three-judge court for the District of New Jersey, involving the validity of an order of the Interstate Commerce Commission. By this order the Commission required the Pennsylvania Railroad Com-

pany and certain other railroads, hereafter referred to as petitioners,* which had refused to do so, to permit the interchange of their cars with the vessels of Seatrain Lines, Inc., a water carrier, in the performance of through transportation of freight over through routes to which petitioners are parties between points in the United States.

The action was instituted by the petition of the petitioners, alleging that the Commission's order was invalid for various reasons and praying for a decree setting the order aside and enjoining its enforcement.

The District Court rejected certain of petitioners' contentions but upheld their argument in one respect. From this decision all parties have appealed. Petitioners are the appellants in No. 48. The United States, the Interstate Commerce Commission, the Trustee of Hoboken Manufacturers Railroad Company,† the New Orleans and Lower Coast Railroad Company,† and Seatrain Lines, Inc.† are the appellants in No. 47.

Opinions Below

The opinions of the specially constituted District Court (R. 109, 141) are reported in 55 F. Supp. 473.

The decisions and order of the Interstate Commerce Commission (R. 35-74), to review which the action was instituted, were rendered in Docket No. 25728, *Hoboken Manufacturers Railroad Company* v. *Abilene & Southern Railway Company, et al.*, and Docket No. 25878, *New Orleans and Lower Coast Railroad Company* v. *The Akron, Canton & Youngstown Railway Company, et al.* The foregoing proceedings were heard on a consolidated record and the Commission's decisions therein are reported in 206 I. C. C. 328, 237 I. C. C. 97, and 248 I. C. C. 109.

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* For convenience and brevity we will use this term, which has likewise been used in the brief of the Pennsylvania Railroad *et al.* to refer to the appellants in No. 48 and the appellees in No. 47.

† For brevity, these parties are hereinafter referred to as the Hoboken, the Lower Coast, and Seatrain, respectively.

Jurisdiction of This Court

The action in the court below was brought under the provisions of acts approved June 10, 1910 (38 Stat. L. 1149) and October 23, 1913 (38 Stat. L. 219), commonly referred to as the Commerce Court Act and the Urgent Deficiencies Appropriations Act, all as re-enacted in Title 28, U. S. C. A. Section 41 (28) and Sections 43-48, inclusive, having to do with suits brought to enjoin and set aside orders of the Interstate Commerce Commission. The direct appeals from the final decree of the court below were taken to this Court under the provisions of U. S. Code, Title 28, Sections 47a and 345.

Probable jurisdiction was noted by this Court on May 8, 1944 (R. 1378).

The Statutes Involved

The proceedings before the Interstate Commerce Commission were instituted by complaints filed by the Hoboken and the Lower Coast, in which it was alleged that certain rules, regulations and practices of the defendant rail carriers, by which they refused to permit cars owned by them to be delivered to Seatrain in the performance of through transportation over through routes in connection with Seatrain, were and would continue to be in violation of paragraphs 4 and 11 of Section 1, paragraphs 1 and 3 of Section 3 and Section 7 of the Interstate Commerce Act. Consideration of the authority of the Commission to make the orders in issue involves examination also of the provisions of Sections 1(1), (3)(a); 3(4); former Sections 6(13)(b); 15(1), (3), (8); 20(11), 305(b), (d), and 307(d). These are reproduced in the appendix hereto.

Statement of the Case

These Appellants-Appellees

The three parties on whose behalf this brief is filed were the complainants before the Commission whose complaints

initiated the proceedings in which the decisions and order here under review were made. The Hoboken and Lower Coast were the original complainants and Seatrain intervened in support of the complaints and adopted their allegations (R. 8, 20, 34, 38).

Seatrain is a common carrier by water. Prior to the requisition and charter of its vessels for war purposes, it was regularly engaged in operating vessels between the ports of New York and New Orleans (Belle Chasse), La. Seatrain's vessels and the manner in which it handles and transports freight are described in *I. C. C.* v. *Hoboken R. Co.*, 320 U. S. 368, 371. The vessels are specially constructed ocean-going ships, with large hatches and four decks. They are designed primarily to make possible the through transportation of freight by rail and water in freight cars, eliminating the labor, expense and delay incident to unloading cars at the ports and transferring the freight between cars and ships, avoiding the risk of injury to freight due to such handling and making possible the through movement of certain freight that could not otherwise move by water. The decks of the ships are equipped with railroad tracks and various appliances to permit the carriage of from 95 to 100 loaded freight cars. By means of cranes and other devices, the cars and their contents are lifted from the tracks of the railroad and then lowered through hatches into the hold of the vessel where they are secured in place. In unloading, the operations are reversed (R. 521-540).

Seatrain began operations between New York, N. Y. and New Orleans, La. in October of 1932 (R. 37). Prior to that time, it had been engaged in operations between New Orleans, La. and Havana, Cuba, only.

The terminal facilities of Seatrain at the port of New York are located on the Hoboken, those at New Orleans (Belle Chasse) are on the Lower Coast. The Hoboken and Lower Coast are terminal switching lines connecting with the various trunk line railroads serving the ports of New York and New Orleans, respectively.

The Events Leading up to the Complaints to the Commission and a Brief Summary of the Commission's Proceedings.

The transportation of freight in railroad freight cars by common carriers by water had been carried on long prior to the institution of operations by Seatrain between New York and New Orleans. Thus numerous so-called car ferry companies had operated and still are operating over the Great Lakes in conjunction with connecting rail carriers (R. 48). *Pennsylvania Co., Operation of Transportation Co.*, 34 I. C. C. 47; *Grand Trunk Ry. Co. of Canada, Operation of Car Ferry Co.*, 34 I. C. C. 49; *Buffalo R. & P. Ry. Co., Operation of Car Ferry Co.*, 34 I. C. C. 52; *Grand Trunk W. Ry. Co., Operation of Car Ferry Co.*, 34 I. C. C. 54 (R. 48). The railroads throughout the country have always, without objection and without any apparent concern, permitted their cars to be interchanged with such carriers by water (R. 48, 65). The Florida East Coast Car Ferry Company has operated for many years between Key West, Florida, and Havana, Cuba (R. 180). Seatrain or its predecessor company began operating in 1929 between New Orleans, La. and Havana, Cuba. At that time and until October, 1932 the railroads generally, including petitioners, permitted their cars to be delivered to Seatrain and its predecessor not only for transportation to Havana, Cuba, but also for delivery to the Cuban railroads for movement beyond Havana (R. 65, 214, 218, 219, 542-544). They also permitted their cars to be delivered to the Florida East Coast Car Ferry Company for transportation to Havana and interior points in Cuba (R. 210).

For many years, the railroads, through the Association of American Railroads and its predecessor, the American Railway Association, have maintained so-called car service rules governing the terms and conditions under which cars interchanged between them are used and paid for. Prior to 1932, these rules had never contained a requirement that

the consent of the car owner must be secured before the delivery of a car to any carrier in the performance of through transportation (R. 491-495). However, in 1932, just prior to the date when Seatrain was to begin operations between New York, N. Y. and New Orleans, the American Railway Association, at the suggestion of certain railroads, including the Pennsylvania, amended the car service rules and adopted a new Rule 4, providing:

> "Cars of railroad ownership must not be delivered to a steamship, ferry or barge line for water transportation without permission of the owners filed with the Car Service Division." (R. 492)

The new rule was aimed at Seatrain (R. 45). Thus, notice of the meeting called for the purpose of framing the rule referred to it as a meeting to formulate rules "to prohibit the interchange of railroad-owned cars to the Seatrain by the Hoboken Manufacturers or New Orleans and Lower Coast"; and out of some twelve water carriers referred to by the American Railway Association in connection with Rule 4, Seatrain was the only water carrier to which any railroad recorded a refusal to permit the delivery of its cars (R. 44). Immediately following the adoption of Car Service Rule 4 a substantial number of carriers recorded their refusals to permit their cars to be delivered to Seatrain (R. 502-7), but many of these refusals were subsequently withdrawn (R. 1258).

Promptly upon the adoption of this Car Service Rule 4, the Hoboken and the Lower Coast filed separate formal complaints with the Interstate Commerce Commission (Docket Numbers 25728, 25878) alleging that the new rule and the refusals of the railroads thereunder to permit their cars to be interchanged with Seatrain were unlawful (R. 8, 20, 38). Extended hearings were had. On October 13, 1941, the Commission issued its decision holding that it had ample jurisdiction to require the railroads to permit the interchange of their cars with Seatrain in the perform-

ance of transportation over through routes to which the railroads were parties with Seatrain and that their refusals violated the requirement of the Act that they should provide reasonable facilities for operating such through routes. However, it entered no order at that time because it held that the question whether through routes in connection with Seatrain existed or should be established was pending before it in a companion proceeding, Docket No. 25727, not yet decided. The circumstances of this latter proceeding must be briefly related.

Following the inauguration by Seatrain of its service between New York, N. Y. and New Orleans in 1932, the Pennsylvania and various other railroads not only refused to consent to the interchange of their cars with Seatrain but refused to recognize or establish arrangements of any kind for through routes and through transportation via Seatrain. Under these circumstances, Seatrain filed a complaint with the Commission, Docket No. 25727, in which it prayed that the Commission determine to what extent, if any, through routes already existed between Seatrain and the railroads named defendants in said complaint, and, in the event it should find that through routes did not exist, that it require the railroads to join with Seatrain in the establishment and maintenance of through routes for through transportation (R. 112, 113). After extended hearings, the Commission found that Seatrain's service provided shippers with a new and improved form of transportation which was required by the public convenience and necessity, that through routes between certain of the defendant railroads and Seatrain were already in existence between certain points and that where through routes were not in existence they should be established and maintained for through transportation by rail and water between points within about 500 miles of New York Harbor and points in the Southwest and a limited section of the South, 226 I. C. C. 7 (R. 57).

In its report in Docket No. 25727, the Commission also affirmed its previous conclusion in Docket Nos. 25728 and 25878, that it had jurisdiction to require the railroads to consent to the delivery of their cars to Seatrain in the performance of through transportation over the through routes found to exist and those which it had prescribed. It found further

> "that the reasonable and appropriate method of interchanging traffic moving over such routes is and will be by the interchange of the loaded cars." (R. 57)

and ruled that if the railroads, parties to the through routes found to exist and prescribed,

> "refuse to so interchange, with Seatrain, traffic moving over such through routes, the matter may be brought to our attention either by a request for reopening Nos. 25728 and 25878, * * * or by a new complaint." (R. 57)

The petitioners still persisted in their refusals to permit their cars to be interchanged with Seatrain, and, therefore, in July, 1938, the Hoboken filed a motion for the reopening of Docket Nos. 25728 and 25878 and the entry of an order therein (R. 668). This motion was met by a request of the defendant railroads for further hearings to determine the measure of the compensation to be paid the railroads for the use of their cars by Seatrain (R. 674). Such further hearings were had and ultimately the Commission rendered a further report (R. 60-72) and entered the order which is the subject of this suit (R. 73).

By this report and order the Commission required petitioners to permit the interchange of their cars with Seatrain in the performance of through interstate transportation over through routes, on condition that they should receive as compensation for their cars the established per diem rate of $1.00 per car per day for each day their cars should be in

Seatrain's possession. This compensation was determined by the Commission to be reasonable in view of findings that it was the compensation paid generally by carriers for the use of cars owned by others, that it represented the average full cost of the ownership and maintenance of cars and that cars when on Seatrain's vessels were subject to much less wear and tear and maintenance expense than when switched in railroad yards or hauled in railroad trains (R. 61-72).

The Action in the District Court

The Petition

Petitioners thereupon brought suit in the District Court for the District of New Jersey to enjoin and set aside the Commission's order. By their petition they alleged that the order was invalid for various reasons:

1. Despite the fact that they had either voluntarily established or had acquiesced in the Commission's order requiring them to join in establishing and maintaining through routes for through interstate transportation in connection with Seatrain, petitioners alleged that because Seatrain was a water carrier the duty imposed by the statute "to provide reasonable facilities for operating such routes" did not embrace a duty to permit their own cars to be used for the through transportation.

2. Although they conceded the Commission's jurisdiction to prescribe the through routes and its authority over the through transportation, petitioners alleged that because Seatrain's ships in operating between New York and New Orleans necessarily passed outside of "the territorial waters" of the United States (whatever that term may mean) and usually, although not always, called at Havana, Cuba, the Commission was powerless to require them to permit their cars to

be delivered to Seatrain in the performance of the through transportation.*

3. They alleged that the compensation fixed by the Commission, which was the established per diem rate of $1.00 per day ordinarily paid by carriers generally for the use of cars owned by others, was not adequate and that the order was defective in certain other respects.*

The Decision of the District Court

The District Court held that the Commission had correctly ruled that since the petitioners were under a duty to establish and maintain through routes for through interstate transportation in connection with Seatrain, and since, as the Commission had found, the interchange of cars was the reasonable and efficient method of accomplishing such through transportation, the fact that Seatrain was a water carrier did not entitle petitioners to assert their ownership of the cars as a reason for refusing to permit such interchange (R. 120-21, 140).

The District Court also ruled that the Commission's determination that $1.00 per day would be reasonable com-

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* For a proper perspective it may be important to recall that

1. A large proportion of the more important railroads of the country have consented without restriction to the interchange of their cars with Seatrain at the established per diem rate (R. 1258).

2. Although petitioners now assert the fact that Seatrain's ships pass outside of territorial waters and usually call at Havana as a reason for refusing to permit their cars to be hauled by Seatrain in the transportation of through freight between New York and New Orleans, and also here object that $1.00 per day is not adequate compensation, nevertheless (a) prior to 1932 all of the petitioners permitted their cars to be interchanged with Seatrain's vessels for transportation to and from Havana, including transportation to and from interior points in Cuba (R. 45); (b) all of them now consent to the interchange of their cars with the Florida East Coast Car Ferry for transportation to and from Cuba (R. 1150-54); (c) eight of the petitioners still permit their cars to be interchanged with Seatrain's vessels for such Cuban transportation (R. 66, 81); and (d) all of this is permitted on the basis of the established per diem rate of $1.00 per day (R. 66, 81).

pensation for their cars while in Seatrain's possession was supported by ample and substantial evidence, and that its order would not be confiscatory (R. 147).

It held, however, that petitioners' duty to permit the interchange of their cars in the performance of through transportation over through routes was limited to transportation and routes entirely within the territorial limits of the United States, and that therefore the Commission could not require petitioners to permit their cars to be interchanged with Seatrain when Seatrain's vessels went outside the territorial waters of the United States or called at Havana (R. 128-29, 140). This phase of the decision is difficult to comprehend in view of the fact that the petitioners have not contested the Commission's jurisdiction to prescribe the through routes, and the court below ruled that the Commission had jurisdiction over the through transportation.

The Issues

The three principal issues for decision here are:

1. Whether because Seatrain is a water carrier the petitioners are under no duty, and the Commission is powerless to require them, to permit the interchange of their cars with Seatrain in the performance of through transportation over through routes to which they are parties, and whether, after a car has been furnished to a shipper and loaded for such through shipment, the owning carrier may assert its ownership as ground for insisting that the goods shall be unloaded at the port and the car shall not be delivered to Seatrain.*

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* It may be observed parenthetically that where a petitioner is the originating carrier it would clearly appear to be its duty to furnish to the shipper a car which may be used for the through transportation. Since most railroads of the country have now consented to the interchange of their cars with Seatrain, the originating carrier should ordinarily have no difficulty in supplying such a car and should be held, if it furnishes one of its own cars for loading, to have given its consent for the use of the car for the through transportation desired by the shipper.

2. Whether the fact that Seatrain's vessels pass outside the territorial waters of the United States and usually call at Havana en route between New York and New Orleans deprives the Commission of authority to require petitioners to permit the interchange of their cars in the performance of through transportation over through routes, the Commission's jurisdiction to prescribe the through routes not being challenged.

3. Whether the Commission's determination as to the compensation to be received by petitioners for their cars when in Seatrain's custody and as to the terms and conditions of the interchange is supported by substantial evidence.

Specification of Assigned Errors to be Urged (R. 150-151)

On behalf of appellants in No. 47, it will be urged that the District Court erred:

1. In not dismissing the petition herein.

2. In setting aside the Commission's order of October 13, 1941, involved in this case.

3. In holding that the Commission's power to require carriers by railroad to interchange or permit the interchange of their cars with common carriers by water and to supply cars which may go upon the lines of common carriers by water when necessary to effect transportation by rail and water routes for continuous shipment over through routes is limited "insofar as that transportation takes place within the United States or its territorial waters."

4. In holding that the legislative history of the Transportation Act of 1940 throws no direct light upon the question before the Court.

5. In holding that although "the Commission has jurisdiction over transportation such as that carried on by the

petitioners and Seatrain, from state to state in the United States, throughout the whole course of that transportation even if it passes through foreign waters and into foreign ports", nevertheless this fact "does not necessarily mean that the Commission can compel carriers by railroad to provide carriers by water with cars for routes passing through extraterritorial waters and into a foreign port."

6. In holding that the Panama Canal Act was emasculated by the Transportation Act of 1940.

7. In holding that the provisions of Section 303(a), 49 U. S. C. A. Section 903(a), mean that the provisions of Part I shall be applicable to transportation subject both to Parts III and I only to the extent that Part I makes them applicable.

8. In holding that the operation of Part I of the Interstate Commerce Act is restricted to transportation taking place within the United States, and that "It follows that the provisions of Section 1(4) and Section 1(10), (11), (13), and (14), the car service provisions, are applicable to transportation 'only insofar as such transportation takes place within the United States.' To conclude that the provisions of Part I apply throughout the whole of a course of transportation which, though it goes from place to place within the United States, in part moves outside of the United States and its territorial waters, would be casuistry."

9. In holding that "We can find no provision in the Interstate Commerce Act that imposes a duty upon carriers by railroad to exchange cars with carriers by water engaging as does Seatrain in transportation through extraterritorial waters and through a foreign port and we can find nothing in the Act which authorizes the Commission to impose such a duty on the petitioners."

10. In holding that "Insofar as the order of the Commission * * * serves to compel petitioners to interchange cars with Seatrain for transportation beyond the

United States and its territorial waters, in foreign waters or to a foreign port, it must be modified and limited."

11. In concluding and holding that "The orders of the Commission are beyond the statutory power of the Commission insofar as they require petitioners to permit the interchange of their cars with and for the use of Seatrain for transportation beyond the United States and its territorial waters, in extraterritorial waters, or to a foreign port. Neither the Interstate Commerce Act nor any other statute authorizes the Commission to require carriers by railroad to permit such use of their cars."

12. In concluding that "The orders of the Commission are based upon a mistake of law in that in making them the Commission assumed erroneously that the petitioners were under a duty to permit the interchange of their cars for the transportation referred to" in paragraph 11, *supra*.

13. In entering its final decree, dated December 8, 1943.

14. In failing to hold that under the Transportation Act of 1940, the Commission has full power to require carriers by railroad and carriers by water to establish through routes and facilities for the operation of through routes for through transportation between points in the United States whether or not the vessels of the water carrier pass outside the territorial waters of the United States or through a foreign port and that this authority includes authority to require railroads to provide cars which may be used for such through transportation and consent to their interchange with water carriers and to require water carriers to do likewise.

15. In failing to hold that the adoption by Congress of the Transportation Act, 1940, following and in the light of the decision of the Commission in both Docket No. 25728, 206 I. C. C. 328 (1935) and Docket No. 25727, 226 I. C. C. 7 (1938), that it had jurisdiction to require the defendant railroads to interchange or permit the interchange of their cars with Seatrain in the performance of through trans-

portation, constituted legislative confirmation of the Commission's authority in this regard.

Summary of Argument

1. (a) The Interstate Commerce Act imposes a duty upon carriers to permit the interchange of their cars in the performance of through transportation over through routes as a part of the duty which the Commission can enforce to provide reasonable facilities for the operation of such through routes. The history of the Act indicates a progressive tendency on the part of Congress to impose upon carriers the duty to coordinate their lines and provide means of through transportation. Especially for the handling of carload freight, the interchange of cars is necessary for the through movement of the commerce of the country and the duty to permit such interchange has been recognized by the Commission and the courts. *Missouri & Illinois Coal Co.* v. *I. C. R. Co.*, 22 I. C. C. 39; *St. Louis S. W. Ry.* v. *Arkansas*, 217 U. S. 136, 145; *Chicago, Rock Island & P. Ry. Co.* v. *United States*, 284 U. S. 80.

The terms "transportation" and "facilities" as used in the Act have been construed as including cars. *Hastings Commercial Club* v. *C. N. & St. P. Ry. Co.*, 69 I. C. C. 489; *Assigned Car Cases*, 274 U. S. 564. Cars are facilities for through transportation by rail and water when the interchange of cars is the reasonable and efficient method of performing the through transportation.

(b) Railroads are under a duty to establish through routes with water carriers as well as with other railroads and therefore there is a corresponding obligation to provide facilities for through transportation by rail and water over such through routes. Indeed, the authority of the Commission is greater where water transportation is concerned than in the case of transportation all-rail. *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457. Part III of the Interstate Commerce Act further amplified the Commission's jurisdiction with regard to through transportation by rail and water and the facilities therefor.

(c) The Commission has found that through routes in connection with Seatrain are required by the public interest, that one of the principal advantages of such through routes is the ability to ship freight in railroad cars without handling at the ports, and that the reasonable and appropriate method of interchanging traffic moving over such through routes is by the interchange of loaded cars. Petitioners have not contested the order of the Commission requiring the establishment of through routes in connection with Seatrain. Therefore, they are under a duty, which the Commission can enforce, to provide reasonable facilities for the operation of such through routes, which means that if they see fit to furnish their own cars for loading they must permit such cars to be interchanged with Seatrain's vessels.

(d) The so-called car service provisions of Section 1 of the Act do not limit the duty of the carriers nor the authority of the Commission with respect to the furnishing of reasonable facilities, including cars, for the operation of through routes with water carriers. Instead, the car service provisions add additional requirements with respect to the use and handling of cars. However, even if the only power of the Commission with respect to cars were derived from the car service provisions, these provisions are violated by the refusal of petitioners to permit the interchange of their cars with Seatrain in the performance of through transportation.

2. The fact that Seatrain's vessels in operating between New York and New Orleans pass outside the territorial waters of the United States and usually call at Havana does not diminish the duty of petitioners or the authority of the Commission with respect to transportation between points in the United States, and the court below erred in reaching a contrary conclusion. There is no substantial merit in petitioners' objection, since eight of them permit their cars to be interchanged with Seatrain for the handling of traffic to and from Cuba and all of them permit their cars to go to Cuba via the Florida East Coast

Car Ferry. The decision of the court below that the Commission is without jurisdiction to order petitioners to permit the interchange of their cars in the operation of through routes is inconsistent with its view that the Commission has jurisdiction over the through transportation. To hold that the Commission is without jurisdiction over through transportation or the reasonable facilities therefor where the vessels of a water carrier pass outside the territorial limits of the United States or pass through foreign waters in performing transportation between points in the United States would emasculate the jurisdiction of the Commission over rail and water transportation and be contrary to the declared purpose of the legislation. The amendments made by the Transportation Act, 1940, confirm the Commission's authority in such cases. The Commission's order does not involve an invalid attempt to exercise authority extraterritorially since Seatrain's vessels are American flag vessels and subject to American laws. *Compagnie Generale Transatlantique* v. *American Tobacco Co.*, 31 F. (2d) 663; *United States* v. *Rodgers*, 150 U. S. 249; *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 129. Moreover, the Commission's order does not operate extraterritorially in so far as petitioners are concerned.

3. The Commission's decision, determining that the established per diem rate paid by all carriers for the use of cars of others will constitute reasonable compensation to the petitioners for their cars when interchanged with Seatrain is a determination of a matter peculiarly within the functions of the Commission, is supported by substantial evidence and will not result in confiscation. The Commission's order is not invalid for the other reasons alleged by petitioners.

Argument

For the convenience of the Court, there are set out in this one brief the contentions of the Hoboken, Lower Coast, and Seatrain both as appellants in No. 47 and as appellees in No. 48.

POINT I

The District Court correctly held that the fact that Seatrain is a water carrier does not render invalid the Commission's order requiring petitioners to permit the interchange of their cars with Seatrain's vessels in the performance of through transportation over through routes prescribed by the Commission but found by it to be in effect.

A. The duty to permit the interchange of cars in the performance of through transportation over through routes is a part of the duty imposed by the Interstate Commerce Act and enforceable by the Commission "to provide reasonable facilities for the operation of through routes."

It must be emphasized that the Commission's order here in issue requires each of the petitioners to permit its cars to be delivered to Seatrain only when such cars are being used for the accomplishment of through transportation over a through route to which such petitioner is a party.

A through route, as the term is used in the Interstate Commerce Act, implies an arrangement between two or more carriers, entered into voluntarily or by compulsion of an order of the Commission, whereby a shipper may have his freight transported from a point of origin on the lines of one carrier to a point of destination on the lines of another without the necessity of any action on his part to accomplish the transfer of his freight from one carrier to the other at the point of junction between them. *St. Louis, S. W. Ry. Co. v. United States*, 245 U. S. 136.

It is obvious that the business of the country could not be transacted without such through transportation. A concern in Harrisburg, Pa., for example, could not effectively sell its products in Dallas, Texas, if it could ship only to

New York Harbor and were compelled to have an agent there to accept the goods and turn them over to another carrier for the movement beyond. Consequently, the history of the Interstate Commerce Act has been marked by the imposition upon carriers of progressively increasing obligations to provide the means of through transportation regardless of the private interests or wishes of individual companies.

Although prior to the passage of the Act to Regulate Commerce, a carrier, be it railroad or water line, was under no legal obligation to undertake through transportation to points beyond its own line or to provide facilities for the accomplishment of such through transportation, and it could refuse to issue a bill of lading calling for delivery on the line of another carrier, *Atchison, Topeka & Santa Fe R. R. Co.* v. *Denver & New Orleans R. R.*, 110 U. S. 667, 680; *Central Stock Yards* v. *Louisville &c. Ry.*, 192 U. S. 568, 571, nevertheless, with the passage of the Interstate Commerce Act, this condition was changed. And by the subsequent amendments of the Act carriers have been more and more required to integrate their facilities and an ever-increasing authority has been reposed in the Commission to weld the various separate carriers into a common machine to provide the advantages of through transportation between the different parts of the country.

Thus, an originating carrier is now prohibited from attempting by contract to confine its obligation to transportation over its own line. It is required to issue to a shipper through bill of lading and is made liable for any loss, damage or injury to property received by it and for failure to deliver such property at a destination upon the line of another carrier, even if the loss shall occur while the goods are in the possession of the latter (Section 20(11)).

Section 1(4) of the Act specifically imposes upon carriers subject to its provisions the obligation to establish and maintain through routes for through transportation

upon reasonable request therefor and "to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to their operation."

By Section 3(4), carriers subject to Part I of the Act, which include petitioners, are required

> "according to their respective powers [to] afford all reasonable * * * facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of * * * property to and from connecting lines; * * *."

The term "connecting lines" is defined as including "any common carrier by water subject to Part III."

By Section 15(3), the Commission is empowered, and it is made its duty "whenever deemed by it to be necessary or desirable in the public interest", to

> "establish through routes * * * by carriers by railroad * * * and common carriers by water * * *, and the terms and conditions under which such through routes shall be operated."

Section 15(8) provides that where "through routes and through rates shall have been established * * * it shall thereupon be the duty of the initial carrier to * * * issue a through bill of lading" in accordance with the shipper's direction and that

> "it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier * * *."

Section 305(b) makes it the duty of common carriers by water

> "to establish reasonable through routes * * * with common carriers by railroad, * * * and to provide

reasonable facilities for operating such through routes, * * *."

And by Section 307(d) the Commission is again empowered to

"establish through routes * * * applicable to the transportation of * * * property by common carriers by water * * * and carriers by railroad * * * and the terms and conditions under which such through routes shall be operated."

Certainly these provisions indicate every intention on the part of Congress that all appropriate arrangements and facilities shall be provided for through transportation over the lines of several connecting carriers and that the Commission shall have broad powers to bring this about.

It is obvious that the accomplishment of such through transportation would be greatly impeded, if not completely defeated, if carriers, notwithstanding their obligation to issue through bills of lading and to establish and maintain through routes for through transportation, could refuse to allow the freight cars owned by them, when they constitute the necessary vehicles for the efficient performance of the through transportation, to go off their own lines.

It was long ago determined, as the result of practical experience, that the free interchange of freight cars was so necessary for the accomplishment of the through transportation required by the commerce of the country that all of the railroads should adopt a standard gauge which would make such interchange physically possible. However, there would be no object in a standard gauge if when a car reached a junction point the owning railroad might assert its ownership of the car as justifying its refusal to permit the car to be delivered to a connection for the purpose of completing the through transportation called for by the shipper. In the case of carload shipments especially, the through movement of the cars is one of the essentials of transportation upon which shippers have become accustomed to rely. Railroad tariffs ordinarily provide that

shippers shall load and consignees shall unload carload freight, relieving the railroads from the burden and expense of actually placing such freight in the cars. *Loading and Unloading Carload Freight*, 101 I. C. C. 394, 396. Consequently when a shipper asks for a car in which to make a carload shipment of machinery, grain, shoes, or some other commodity to a destination upon the line of some other and distant carrier, he expects that, barring accidents or contingencies occurring in the physical operation, his goods will go forward to destination in the car in which he loads them and without being handled and disturbed at junction points en route, with the risk of damage or loss which such handling inevitably involves. This is the essence of ordinary carload transportation under through carload rates maintained by the carriers, and it would be set at naught if the originating carrier, having furnished one of its own cars for loading, could, when the car reached the junction point with the next carrier on the route, refuse to permit the car to go off its rails, giving its ownership of the cars as the excuse, and could insist that the freight be unloaded and transferred to another car.

Hence we find in the decisions a consistent recognition that the duty to provide through transportation carries with it a duty to permit cars to be interchanged.

Shortly after the adoption of the Act, several cases came before the Federal courts in which the question arose whether a railroad was under an obligation to interchange cars. It was held that Section 3(2) (now Section 3(4)) so required. *Toledo, A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. 730; *Toledo, A. A. & N. M. Ry. Co.* v. *Pennsylvania Co.*, 54 Fed. 746; *Chicago, Burlington, etc., Ry. Co.* v. *Burlington, Cedar Rapids & Northern Ry. Co.*, 34 Fed. 481. The decisions in these cases were cited with approval in *Peoria Ry.* v. *United States*, 263 U. S. 528, 535. In *Missouri & Illinois Coal Co.* v. *I. C. R. R. Co.*, 22 I. C. C. 39, the Commission held that a railroad violated the Act in prohibiting, by embargo, its cars from going off its rails.

In its opinion, the Commission said (p. 44):

"There can be little doubt as to the duty of the carriers under the present Act. The commerce of the country is regarded as national, not local, and the railroads are required to serve the routes which they have established, or which they may have been required to establish, in connection with other carriers, without respect to the fact that this may carry their equipment beyond their own lines. In the opening section of the Act, is to be found this mandate: '(here the Commission cited those provisions of the Act requiring the establishment of through routes and the furnishing of facilities for their operation, which provisions will now be found in Sec. 1(4)).' "

Continuing, the Commission remarked, at page 45:

"It would be difficult to draft language more direct than this, or language that would more clearly express the intent of Congress that our commerce shall flow freely, in established channels, without hindrance, embarrassment or delay. Supplementing this provision, the Act proceeds in this broad and inclusive language • • •." (citing what is now Section 1(4))

At pages 46 and 47, the Commission, referring to the provisions of what is now Section 3(4), said:

"Reading these provisions together, there can be no doubt as to the intent of Congress. Our railroads are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other. The full burden of this great obligation is in the first instance cast upon the carriers themselves. In compliance with these recognized requirements of the law the carriers have undertaken to establish a body of rules and by cooperation in their enforcement insure the fulfillment of the law's demands. The duty of the initial carrier to furnish equipment for a shipment which moves on to other lines is universally

> recognized, and in cases where that is impracticable or deemed unwise the carriers assume to bear the burden of the transfer from the equipment of one line to that of the other. By agreement the carriers have fixed the rental value of a car for their own purposes at 30 or 35 cents a day. That rental, together with the rules governing the movement of foreign equipment (equipment not belonging to the line upon which it stands), is presumed to secure the return to the initial carrier of its own equipment."

In *St. Louis, S. W. Ry.* v. *Arkansas*, 217 U. S. 136, this Court, although reversing the decision of the lower court on other grounds, quoted with approval the following from the lower court's opinion (pp. 145-146):

> " 'The evidence indisputably establishes that it is a benefit to the shipping public to interchange cars and not to refuse to send cars off the line * * *. It is unquestionably good for the public that the railroads of the United States have a system of interchange of cars, instead of each road hauling to its termini only, and thereby force reloading and reshipment. The inconvenience and expense of such a system would at once condemn it as failing to meet public requirements. It is unquestionably the policy of both State and Federal legislation to facilitate, if not require, an interchange of cars. The most recent illustration of this policy is found in section 17, act April 19, 1907 (Acts 1907, p. 463). For one railroad company to be an Ishmaelite among its associates would operate disastrously to its shippers.' "

Thus we find, from the early days of the Interstate Commerce Act, recognition by the courts and the Commission that the Act imposes upon carriers subject to its provisions the duty, which the Commission must enforce, to permit their cars to be delivered to others, and that this duty and power are derived from and are incidents of the duty and authority with respect to through routes, reasonable facilities therefor, and reasonable facilities for interchange.

The correctness of this view was confirmed by this Court which in 1931 in *Chicago, Rock Island & P. Ry. Co.* v. *United States*, 284 U. S. 80, citing the Commission's decision in the *Missouri & Illinois* case, said (p. 91):

> "Nor is it disputed that under the law, in the operation of through routes, common carriers subject to the Interstate Commerce Act may be obliged to permit their car equipment to be carried beyond their own lines. See Missouri & Illinois Coal Co. *v.* Illinois Central R. Co., 22 I. C. C. 39."

In the dissenting opinion of Mr. Justice STONE, concurred in by Justices HOLMES and BRANDEIS, it was said (pp. 101-102):

> "In 1886, the adoption by the southern railroads of standard gauge track removed the last physical barrier to free interchange of equipment throughout the nation; and in 1911 a rule which the railroads had long before come to recognize as a necessity of commerce was declared to be an obligation of law, when the Interstate Commerce Commission, under the amended Interstate Commerce Act, decided that carriers could not refuse to permit their freight cars to pass onto rails of connecting carriers. *Missouri & Illinois Coal Co.* v. *Illinois Central R. Co.*, 22 I. C. C. 39; See *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 217 U. S. 136, 145, 146, 148. The obligation has never since been doubted, and the power to regulate it is exclusively vested in the Commission. *Assigned Car Cases*, 274 U. S. 564; *United States* v. *New River Co.*, 265 U. S. 533."

It is clear from the decisions cited that it was considered that the obligation to furnish cars for through transportation and to permit the interchange of such cars in the accomplishment of such through transportation was imposed by the provision of Section 1(4) making it the duty of carriers "to provide reasonable facilities for operating such routes." It has been suggested by petitioners that cars are not "facilities" within the meaning of this

language. However, it is difficult to imagine what might be considered "facilities" for through transportation if cars are not embraced within the intent of this term. Indeed, it has been consistently held by the Commission and the courts that cars *are* "facilities" within the language quoted.

The term "transportation" is defined in Section 1(3) of Part I as including "locomotives, cars, and other vehicles, vessels, and all instrumentalities and *facilities* of shipment or carriage irrespective of ownership * * *." In *Tank Car Corp.* v. *Terminal Co.*, 308 U. S. 422, this Court stated that freight cars are "*facilities* of transportation" as defined in Section 1(3).

In *Missouri & Illinois Coal Co.* v. *I. C. R. Co.*, *supra*, the Commission, in reaching its conclusion as to the duty to interchange cars, cited Section 3(2) (now Section 3(4)), and referred to the duty imposed thereby to "furnish the necessary *facilities* for transportation, * * *."

In *Hastings Commercial Club* v. *C. M. & St. P. Ry. Co.*, 69 I. C. C. 489, 494, the Commission said:

> "*Cars* and trains were said to be *facilities* in *Little Rock & Ft. S. Ry. Co.* v. *Oppenheimer*, 64 Ark. 271 * * * a switch engine used only and entirely for handling freight at a terminal is clearly a terminal facility."

In *City of Nashville* v. *Louisville & N. R. R. Co.*, 33 I. C. C. 76, it was held (p. 85) that

> "the interchange of *cars* are thus expressly included among the *facilities* for the interchange of traffic which the second paragraph of Section 3 (now Sec. 3(4)) in turn requires carriers to afford to all connecting carriers equally * * *."

In *Assigned Cars for Bituminous Coal Mines*, 93 I. C. C. 701, it was held:

> "Private *cars* which are paid for by carriers for use and are used on the lines are clearly '*facilities* possessed,' * * *." (p. 730)

The language of the opinion in *Assigned Car Cases*, 274 U. S. 564, leaves no doubt that this Court regarded cars as facilities. There it was said (p. 575):

> "Likewise Congress may prescribe how carrier-owned *cars* shall be used. The regulation prescribed does not invade the private business affairs of the carrier. It merely limits the use of certain interstate transportation *facilities.*"

Further at page 580 the Court said:

> "It found also that the use of private cars tends more and more to produce inequalities in the use of *other facilities*, such as locomotives, tracks, and terminals; and that many, at least, of the so-called car shortages have been due to * * * a shortage of *such other facilities.*" (Italics ours.)

We submit therefore that the Interstate Commerce Act clearly evidences the intention of Congress that carriers shall be under a broad duty, enforceable by the Commission, to establish through routes for through transportation and to provide the facilities for such through transportation, and that, in the nature of things, such "facilities" must include cars which may be interchanged, when this is the reasonable, efficient and desirable method of accomplishing through transportation. We submit that these are duties which exist quite apart from the further and more specialized duties imposed by the so-called car service provisions of Section 1 which are discussed hereafter.

B. **The obligation to establish and maintain through routes and provide reasonable facilities, including cars, for the operation thereof exists and is enforceable with respect to through transportation via rail and water carriers.**

It follows from the previous point that if a duty is imposed by the statute upon railroads to establish and maintain through routes for through transportation in connection with their lines and the lines of water carriers, there is a correlative obligation to provide, jointly with the water

carriers, whatever facilities may be reasonable for the operation of such rail and water through routes. And it follows, further, that when it shall so happen, as in the case of Seatrain, that the interchange of cars constitutes the reasonable and economical method of accomplishing through transportation on such through routes, the same duty exists to permit such interchange and to furnish cars which can be so interchanged in the performance of through transportation as exists with regard to through transportation over all-rail routes.

Petitioners have not contested their obligation, pursuant to the Commission's order in Docket No. 25727, to establish and maintain through routes for through transportation via their lines and Seatrain. Neither have they taken exception to the Commission's findings that the advantages of these routes to the shipping public are in large part the result of the ability to have freight shipped by water in railroad cars without handling at the ports. Their argument here, therefore, comes to this: that although the statute imposes upon them an obligation which the Commission can enforce to establish and maintain through routes for through transportation in connection with Seatrain, which obligation is in no way nullified because Seatrain is a water carrier, nevertheless, in so far as cars owned by themselves are concerned, they are not under the same duty to provide reasonable facilities for the operation of such through routes as would exist where all-rail transportation is involved.

We submit, however, that the Commission has as full, and indeed more complete, authority with respect to through routes between railroads and water carriers and the facilities for and terms and conditions of their operations, as it has in relation to through routes between railroads only. This was plain as the statute stood when Hoboken and Lower Coast filed their complaints with the Commission. It is even more clear under the law today as it was amended by the Transportation Act of 1940.

Neither Section 1(3) and (4) nor Section 3(4), previously cited, making it the duty of carriers subject to the Act

to provide "transportation", defining transportation as including "cars, and other vehicles", and requiring carriers "to establish through routes * * * and to provide reasonable facilities for operating through routes" and to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines", by its language limits the obligations of carriers to through routes only in connection with railroads. They have been consistently construed as imposing equal obligations in connection with transportation by rail and water.

Flour City S. S. Co. v. *Lehigh Valley R. R. Co.*, 24 I. C. C. 179;

Chattanooga Packet Co. v. *I. C. R. R. Co.*, 33 I. C. C. 384;

Pacific Navigation Co. v. *Southern Pacific Co.*, 31 I. C. C. 472.

In the last cited case, the Commission said (p. 481):

> "By maintaining through routes and joint fares with the Pacific Coast Steamship Company and the San Francisco & Portland Steamship Company and refusing to establish through routes and joint fares with complainant, defendants are violating section 3. They are not affording equal facilities for the receiving, forwarding, and delivering of passengers to and from their lines and those connecting therewith."

Moreover, even before the Transportation Act of 1940, Congress gave the Commission greater authority where through transportation by rail and water was concerned than it possessed under the clauses previously quoted. By the Panama Canal Act, so-called, of 1912, Congress added sub-division 13 to Section 6 of the Interstate Commerce Act, providing in part as follows:

> "(13) When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers,

and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, *in addition to the jurisdiction given by the Act to regulate commerce*, as amended June eighteenth, nineteen hundred and ten:

"(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: *Provided*, That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this part.

"(b) *To establish through routes* and maximum joint rates between and *over such rail and water lines*, and to *determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced*." (Italics ours.)

The authority thus granted to the Commission by paragraph (b) to establish through routes between a railroad and a water carrier and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic involved, was certainly broad enough to enable the Commission to require a railroad to permit its cars to be used for the handling of the traffic. Such authority was no more drastic than that provided by para-

graph (a), which empowers the Commission to require a railroad to construct a track to the pier of a water carrier, *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457. In that case, the Court, speaking through the present Chief Justice, said (p. 462):

> "The Panama Canal Act is by its terms supplemental to the Act to Regulate Commerce, and its obvious purpose was to extend to rail carriers connecting with water carriers in interstate commerce the requirements of § 1, par. 9 of the earlier acts, c. 3591, 34 Stat. 585, 586; c. 309, 36 Stat. 547, for furnishing switching and car service to lateral branch railroads and private sidetracks. By § 6, par. 13, so far as pertinent to the present inquiry, the commission is given authority to establish physical connection between the lines of the rail carrier and the dock of the water carrier, and to determine and prescribe the terms and conditions upon which the connecting tracks should be operated. It 'may either in the construction or the operation of such tracks determine what sums shall be paid to or by either carrier.'"

Had Congress not intended the foregoing language to carry with it the power to determine "*all* the terms and conditions" but to convey only authority to determine certain terms and conditions other than the use of cars, it could and should have made an appropriate exception by the language of the statute. While Seatrain's type of ships was not then in operation, there were many water carriers found by the Commission to be such which handled freight in cars and performed transportation of freight in through routes by the interchange of cars. *Pennsylvania Co., Operation of Transportation Co.*, 34 I. C. C. 47; *Grand Trunk Ry. Co. of Canada, Operation of Car Ferry Co.*, 34 I. C. C. 49; *Buffalo R. & P. Ry. Co., Operation of Car Ferry Co.*, 34 I. C. C. 52; *Grand Trunk W. Ry. Co., Operation of Car Ferry Co.*, 34 I. C. C. 54.

If there were any doubt as to the duty of carriers by railroad and water to establish through routes and provide

reasonable facilities for their operation, and of the Commission's authority to enforce this duty before the passage of the Transportation Act, 1940, adding Part III to the Interstate Commerce Act and bringing water carriers generally under the regulatory jurisdiction of the Commission, such doubt was clearly removed by that Act. First of all, Congress enacted a very emphatic declaration of policy, by which it declared:

> "National Transportation Policy
>
> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—*all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.*" (Italics ours.)

Then it amplified paragraph (4) of Section 1 to eliminate any question that it imposed upon railroads the duty to provide for through transportation in connection with water carriers by the addition of the following clause:

> "and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through

routes with common carriers by water subject to part III, * * *."

Paragraph (4) was re-enacted to provide further:

"It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; * * *."

New Part III of the Act imposed correlative duties on water carriers. Section 305(b) makes it

"the duty of common carriers by water to establish reasonable through routes * * * with common carriers by railroad, * * * and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto."

If the duty is imposed by the Act on carriers, the Commission has the power to enforce it. And this, too, is made plain by the language of the statute as it now is. By paragraph (3) of Section 15, the Commission is empowered and directed to

"establish through routes * * * applicable to the transportation of * * * property * * * by carriers by railroad subject to this part and common carriers by water subject to part III, * * * and the terms and conditions under which such through routes shall be operated."

and by Section 307(d) the Commission is empowered and directed to

"establish through routes * * * applicable to the transportation of * * * property by common carriers by water * * * and carriers by railroad * * * and the terms and conditions under which such through routes shall be operated."

It follows that the fact that Seatrain is a water carrier does not diminish but, if anything, increases the duty of the petitioners, and the authority of the Commission to require them, to establish through routes and provide reasonable facilities for their operation. And if the interchange of cars constitutes the efficient and desirable method of performing such through transportation, then cars which may be so interchanged are as much the reasonable "facilities" to be provided as in the case of through all-rail transportation.

On page 24 of their brief, petitioners assert that although cars may be "facilities" where all-rail transportation is concerned, "freight cars have never been considered facilities of carriage on ocean-going ships." The record shows, however, that before Seatrain's time freight cars were used for the through transportation of freight by water carriers (R. 48). The American Railway Association itself, in promulgating so-called Car Service Rule 4, which provided the machinery whereby the petitioners gave effect to their refusals to permit the interchange of their cars with Seatrain, listed a substantial number of water carriers with whom interchange of cars was contemplated. It is true, of course, that the Seatrain ships were in one sense a new development and made possible the carriage of freight in cars in the holds of the vessels. But to argue that because cars had not previously been so handled, therefore they were not "facilities" for the operation of through routes, is the equivalent of saying that the word "facilities" embraces only such equipment as was in use at the time the statute was enacted. On such reasoning, a Diesel locomotive, a container car, or a new unloading device would not be "facilities" within the language of the Act.

Petitioners did not challenge the Commission's finding that the interchange of cars constitutes the reasonable and efficient method of accomplishing through transportation in connection with Seatrain. Certainly in the case of Seatrain cars are reasonable facilities for through transportation over through routes.

C. **The Commission has found that the establishment and maintenance of through routes for through transportation in connection with Seatrain are required by the public interest and that the interchange of cars with Seatrain constitutes the reasonable and efficient method of accomplishing the through transportation. These findings are not challenged and amply support the Commission's order.**

This case cannot properly be considered in a vacuum apart from the actual facts regarding Seatrain's services and their advantages as found by the Commission.

In Docket No. 25727, 226 I. C. C. 7, the Commission found that:

> "Even if it were held that through routes do not now exist in connection with Seatrain, the record shows that the establishment of such routes and of joint rates over same would be in the public interest and should be prescribed."

Again, in the same proceeding, it determined that

> "the establishment and maintenance of through routes (with Seatrain) are necessary in the public interest."

The Commission in Docket No. 25727 also found, as is perfectly obvious from the very nature of Seatrain's ships and facilities,

> "that the reasonable and appropriate method of interchanging traffic moving over such routes is and will be by the interchange of the loaded cars."

Some of the principal advantages of such routes result from the fact that Seatrain's vessels are equipped to handle freight in railroad cars, and that thereby shippers are

> "saved packing and handling expenses necessarily incurred if the movement is over break-bulk water routes; that certain classes of bulk freight which cannot be handled in vessels of the usual type and which cannot bear all-rail charges can be handled by Seatrain and

thus markets opened up which theretofore could not be reached, * * *." (226 I. C. C. 7, 20) (R. 85, 86)

To all of the foregoing findings the petitioners have taken no exception and pursuant thereto they have joined in establishing through routes and joint through rates for through transportation via Seatrain. Certainly these are equivalent to a finding that for such through transportation cars constitute "reasonable facilities".

How can it now be said that the Commission, having found that the interchange of cars is the reasonable method of accomplishing through transportation in connection with through routes via Seatrain, has no power to make such interchange compulsory? Such a conclusion would enable petitioners and others to defeat the declared purpose of the Act.

The arguments of our opponents rest, as we submit, upon a misconception of the legal and practical situation and of their obligations as carriers, parties to arrangements for through routes and through transportation. The correct view, as we conceive it, can perhaps be illustrated by a hypothetical example.

As we have said, the Pennsylvania Railroad, pursuant to the order of the Commission in Docket 25727, which it did not contest, entered into arrangements for through routes via Seatrain. Thus, presumably, it entered into such an arrangement with the Erie Railroad, the Hoboken Manufacturers Railroad, Seatrain, the New Orleans and Lower Coast Railroad, and the Missouri Pacific Railroad for the establishment and maintenance of a through route for through transportation from Harrisburg, Pa., to Dallas, Texas.

Let it be supposed that a shipper at Harrisburg desiring to ship over this route notifies the Pennsylvania Railroad that he has a carload of goods to be transported to a consignee in Dallas over this through route, and requests that a car be furnished for the loading of his goods for such through shipment. What are the obligations of

the several carriers in fulfillment of their duty to provide reasonable facilities for operating this through route?

It has been held that in a certain sense the obligation and undertaking of carriers which maintain through routes for through transportation is joint. *L. & N. R. R.* v. *Sloss-Sheffield*, 269 U. S. 217, 232-234. The nature of the obligation of each carrier in the through route and the facilities which it is reasonable for it to provide must, however, depend upon its particular situation.

Before the through movement of the goods can even begin, a car must be provided for the purpose. The obligation to furnish the car is on the originating carrier, the Pennsylvania.

Plainly, in view of the Commission's unchallenged findings, the Pennsylvania, knowing the shipper's desire, being itself party to the through route and the joint through rates, and issuing a through bill of lading for through transportation via Seatrain does not furnish a reasonable facility for the operation of the through route if it provides a car which may not be used for through transportation but may be hauled only as far as New York Harbor.

The Pennsylvania could, of course, furnish to the shipper in Harrisburg a car owned by some other railroad which had consented to the use of its cars for through transportation in connection with Seatrain. If it elects, however, to supply the shipper with one of its own cars, then we submit it does not fulfill its obligation if it attaches to that car the condition that on the basis of its ownership of the car it will prohibit the car, after it has reached Hoboken, from being delivered to Seatrain's vessel for the through carriage of the goods.

It is also necessary to consider the situation in the case of a shipment in the reverse direction. Suppose a man in Dallas desires to send a shipment to a consignee in Harrisburg. The Missouri Pacific has an empty Pennsylvania car on its line at Dallas. Under the car service rules it is obligated to return that car to the Pennsylvania. Can it be said that the Pennsylvania, as a party with the Missouri

Pacific to the through route from Dallas to Harrisburg via Seatrain, does its share in providing reasonable facilities for the operation of that route if it insists that its car may not be used for the through shipment but must either be returned empty or unloaded at New Orleans and that the Missouri Pacific must furnish one of its own cars for the through shipment? The answer is plainly in the negative.

D. The so-called "car service" provisions of the Act do not, because Seatrain is a water carrier, relieve petitioners of the duty to permit the interchange of cars owned by them with Seatrain in the performance of through transportation over through routes.

It remains to consider the argument which petitioners have made based upon their "history" of the Act, and upon the language of the so-called "car service" provisions, paragraphs (10)-(17) of Section 1, added thereto by the Esch Car Service Act of 1917.

Briefly, they contend, (a) that cars are not embraced within the term "facilities for the operation of through routes" which the carriers are obligated to provide; (b) that since paragraphs (10)-(17) refer to "car service", therefore the only power the Commission now has as to the furnishing and use of cars is derived solely from these provisions and, (c) that the language of these provisions excludes any idea that the Commission has authority to require the delivery of cars to a water carrier. We will answer these contentions briefly in order.

(a) As we have argued in Point A, the contention that cars are not embraced within the term "facilities" does violence to ordinary sense. It is in conflict with the obvious inference from the language of Section 1(3) providing that

> "The term 'transportation' * * * shall include * * * cars * * * and all instrumentalities and facilities of shipment or carriage, * * *."

And it is contrary to the decisions of the Commission and the courts in which cars have been held to be "facilities",

as that word is used in Sections 1(4), 3(4) and other provisions of the statute.

Petitioners contend (Brief, p. 32) that even in *Missouri & Illinois Coal Co. v. Illinois Central R. R. Co.*, 22 I. C. C. 39, the Commission did not decide that the provisions of the Act making it the duty of railroads to provide reasonable "facilities" for the operation of through routes obligated them to permit the interchange of their cars. But this Court did not so view the matter when, in *Chicago, Rock Island & P. Ry. Co. v. United States*, 284 U. S. 80, 91, it cited the *Missouri & Illinois* case as authority for the proposition:

> "that under the law, in the operation of through routes, common carriers subject to the Interstate Commerce Act may be obliged to permit their car equipment to be carried beyond their own lines."

When the *Missouri & Illinois* case was decided, the "car service" provisions had not yet been enacted and the duty to permit the interchange of facilities existed only because of the obligations imposed by Section 1(4) and 3(4) "to provide reasonable *facilities* for operating such (through) routes" and to "afford all reasonable, proper and equal *facilities* for the interchange of traffic."

In the previous point, we have also answered petitioners' argument that cars are not "facilities" where water transportation is concerned. Whether they are "reasonable facilities" obviously depends upon the nature of the water carrier in any particular case. The Commission has, in effect, found that they are "reasonable facilities" for through transportation via Seatrain, and since that decision is both patently correct and amply supported by evidence it is not subject to reversal here.

(b) The fact that "cars" are plainly embraced within the term "facilities" disposes of petitioners' argument that the only duty and authority with respect to cars are such as are provided for in the "car service" provisions.

Petitioners' argument to the contrary would require the conclusion that in enacting the car service provisions Con-

gress intended to diminish the duty of carriers with respect to cars and to curtail the authority which the Commission previously possessed to require the interchange of cars in the performance of through transportation as a part of its jurisdiction to require the provision of adequate facilities for the operation of through routes. It is inconceivable that Congress had such an intention. On the contrary, it seems plain that the Esch Car Service Act, which wrote the car service provisions into the Interstate Commerce Act, was designed to impose upon railroads duties in addition to those previously resting upon them and to increase rather than reduce the Commission's authority. For example, it appears from the *Car Supply Investigation*, 42 I. C. C. 657, the result of which led directly to the enactment of the car service provisions, that the Commission considered that it already had jurisdiction to require the *delivery* of cars but that further legislation was needed in order to make it the duty of the carriers to provide reasonable rules for the *return* of cars. Thus the Commission said (p. 672):

> "The power of the Commission to require a carrier to permit its cars to move from its line to the rails of a foreign line is thus clearly defined, and it is a necessary corollary that the observance of a reasonable rule for the return of such cars to the owning line may also be required."

It also used the following language, which applies directly to the case at bar (p. 674):

> "It would indeed be an anomaly if certain carriers could with impunity violate section 1 by failure to observe reasonable rules for the 'exchange, interchange, and return of cars,' and by so doing prevent other carriers from furnishing the transportation upon reasonable request which is required by the same section."

It will be noted, moreover, that the car service provisions relate to matters which have no direct connection to the operation of through routes. Therefore, the inference is plainly justified that Congress intended by the car ser-

vice provisions to impose duties upon the carriers and give authority to the Commission not in substitution or diminution of, but in addition to, those previously existing.

(c) We submit that the car service provisions themselves are not to be construed as leaving petitioners free from any duty to permit the interchange of their cars in the performance of through transportation over through routes with water carriers.

It is true that the car service provisions by their language are directed to railroads. By paragraph (10) the term "car service" is defined as including the "use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles • • • by any carrier by railroad". Paragraph (11) makes it the duty only "of every carrier by railroad" to furnish safe and adequate car service. By paragraph (13) the Commission is authorized to require only "carriers by railroad" to file with it "their rules and regulations with respect to car service". But this does not mean that the car service rules which railroads are thereby required to maintain and observe shall relate only to the interchange of cars with other railroads or that they are reasonable rules if they preclude the interchange of their cars with water carriers in the accomplishment of through transportation over through routes with such water carriers, where the interchange of cars constitutes the desirable and efficient method of performing the through transportation.

There is nothing in paragraph (10) defining "car service" which renders the car service provisions inapplicable and of no effect where a water carrier is concerned. The "interchange" referred to therein is, of course, defined as interchange *by* a "carrier by railroad," but the statute does not say that this means only interchange *with* another carrier by railroad. The word "use" means "use" by a railroad, but is a railroad not using a car when it furnishes the car to a shipper for through movement and later when it delivers that car loaded with freight to a connecting carrier, whether by rail or by water, in order to complete

a through transportation undertaking which the railroad has contracted to carry out? The terms "supply" and "distribution" plainly do not mean supply and distribution only to other railroads. They relate, for example, to supply and distribution to shippers. This is clear from paragraph (12), in which the word "distribution" is again used, obviously in the sense of distribution not to railroads but to shippers. *Assigned Car Cases*, 274 U. S. 564.

Moreover, we submit that a car service rule under which the Pennsylvania refuses to allow the Missouri Pacific in the hypothetical case described in the previous point to use an empty Pennsylvania car for the transportation of a through shipment from Dallas to Harrisburg via Seatrain would plainly be an unreasonable car service rule in violation of the car service provisions.

We submit, therefore, that petitioners' argument does not warrant the conclusion that because Congress enacted the car service provisions it thereby freed petitioners from all duty to furnish for through transportation in connection with a water carrier, cars which may be interchanged with that water carrier where such interchange constitutes the desirable and efficient method of performing the through transportation. Nor can it be validly argued that the enactment of these provisions gives petitioners the right, when they should see fit to furnish one of their own cars to a shipper for a through shipment over such a through rail and water route, to adopt and enforce a car service rule under which they may assert their ownership of the car as a reason for prohibiting its delivery to the water carrier and for compelling the unloading of the freight at the point of interchange with the water carrier. Neither can it be said that the car service provisions gave petitioners the further right to impose burdens upon other railroads, parties with them to through routes, by prohibiting such other railroads from using petitioners' cars for through shipments over such routes.

POINT II

The fact that Seatrain's vessels in operating between New York and New Orleans pass outside the territorial waters of the United States and usually call at Havana does not diminish the duty of petitioners or the authority of the Commission with respect to the interchange of cars for the performance of through transportation between points in the United States. The Court below erred in reaching a contrary conclusion.

A. There is no substantial factual basis for petitioners' objection to the Commission's order.

In considering this point, it is well to recall that when Seatrain (or its predecessor) was operating only between New Orleans and Cuba all of the petitioners permitted their cars to be interchanged with Seatrain's vessels for transportation to and from Cuba (R. 45), that eight of them still permit their cars to be used for through transportation to and from Cuba via Seatrain (R. 81), and that all of them permit their cars to be used for through transportation to and from Cuba via the Florida East Coast Car Ferry (R. R. 188, 501-506). In short, in asserting that they should not be required to permit the delivery of their cars to Seatrain because Seatrain's ships, in the performance of through interstate transportation between points in the United States, usually call at Havana, petitioners cannot be seriously concerned with any objection of practical substance.

This is confirmed by the further fact that the evidence affirmatively shows and the Commission found that cars containing through interstate freight remain in Seatrain's vessels when they call at Havana, that the cars are not in any way disturbed and that the Cuban government has not attempted to interfere with them in any way (R. 1150).

B. **The decision of the lower court and petitioners' argument are inconsistent with the admitted jurisdiction of the Commission to prescribe through routes and joint rates, and with the practical construction given to the statute by the Commission.**

Petitioners here did not, on the ground that Seatrain's vessels pass outside the three-mile or the ten-mile limit and ordinarily call at Havana, contest the Commission's authority to require them to join with Seatrain in establishing through routes for through transportation and in publishing joint through rates for such through transportation, nor did they challenge its order directing them to issue through bills of lading for such through transportation.

We submit that if the Commission has authority to require these things where the vessels of a water carrier go beyond territorial waters, it has equal authority to require the furnishing of reasonable facilities for the operation of the through routes so prescribed.

Moreover, on this view of the matter, the decision of the lower court and the contentions of petitioners are in conflict with the practical construction given to the Act by the Commission, which we submit is entitled to great weight. For in numerous cases the Commission has ordered the establishment of through routes and joint rates by railroads in connection with water carriers for transportation between points in the United States where the water carriers necessarily operate outside the territorial waters of this country. *Pacific Navigation Co. v. Southern Pacific Co.*, 31 I. C. C. 472; *Eastern Shore Development S. S. Co. v. B. & O. R. R.*, 32 I. C. C. 238; *Colonial Navigation Co. v. N. Y. N. H. & H. R. R.*, 50 I. C. C. 625; *Chicago, R. I. & P. Ry. v. United States*, 274 U. S. 29. And the Commission has also not hesitated to require the establishment of through routes and joint rates for transportation by railroads and water carriers between points in the United States where the water carriers in the nature of things have passed through

territorial waters of another country. Such is the case with all water carriers plying between upper Great Lakes ports and Erie ports, since, as the maps clearly indicate, the ship channels are to a large extent upon the Canadian side of the international boundary. *Flour City S. S. Co.* v. *L. V. R. R. Co.*, 24 I. C. C. 179. Ships operating between the Atlantic and the Pacific coasts not only pass beyond the three-mile or the ten-mile limit but often pass through territorial waters of other countries, and yet, as in the *Pacific Navigation Co.* case, *supra*, the Commission has ordered the establishment of through routes in connection with such carriers.

C. **To hold that the Commission is without jurisdiction to require the furnishing of reasonable facilities for the operation of through routes by rail and water where the water carrier goes beyond the territorial limits or passes through foreign waters would be contrary to the history and purpose of the legislation and to the provisions written into the Act in 1940.**

This Court will realize that, in the nature of things, the vessels of water carriers in the coastwise and intercoastal trades must go on the high seas beyond the limits of territorial waters, as tested by any of the standards which have usually been employed, and that the water carriers operating on the Great Lakes—for example, between Buffalo and Chicago or Duluth or between Oswego, New York, and Cleveland—pass through Canadian waters, since at various points the ship channels are on the Canadian side of the international boundary (R. 85). Hence, if the Commission were without power to require a carrier to provide reasonable facilities for the operation of through routes by rail and water between two points in the United States, where vessels pass outside of domestic territorial waters, or traverse waters under the sovereignty of another nation, the powers of the Commission over rail and water transportation would be largely non-existent.

In order to reach its conclusion that such really is the legal situation, the lower court was forced to argue that the Transportation Act, 1940, actually diminished the Commission's jurisdiction with regard to through transportation by rail and water. Such reasoning, however, is directly opposed to the plain purpose of Congress to broaden the regulatory authority of the Commission and to bring all transportation, both by land and water, under its jurisdiction. Indeed, the Transportation Act, 1940, far from reflecting any intention to reduce the Commission's authority, represented the latest action on the part of Congress in a long history of progressively increasing the integration of the different facilities of transportation and the Commission's jurisdiction over them. It reflected also the continuous watchfulness on the part of Congress that the railroads should not be able to use their great power to destroy competing transportation instrumentalities and particularly water carriers.

When the Panama Canal was opened to provide the means of water transportation between the opposite coasts of this country, Congress was on its guard lest the railroads, by themselves obtaining control of water carriers or refusing to establish arrangements with them for through transportation, should prevent the public from enjoying the great benefits offered by the Canal. Therefore, Congress enacted the Panama Canal Act of August 24, 1912 (37 Stat. L. 568, U. S. Code, Title 49, Section 51). This Act had two important provisions. First, it contained the clauses which were added to Section 5 of the Interstate Commerce Act prohibiting a railroad, without the approval of the Commission, from owning an interest in a water carrier with which the railroad did or might compete. By the second provision it added clauses to Section 6 of the Interstate Commerce Act designed to increase the jurisdiction of the Commission where through rail and water transportation should be involved.

Until that time the Commission had had jurisdiction of through transportation by water only when used with rail-

road transportation "under a common control, management, or arrangement for a continuous carriage or shipment" (Section 1(1)(2)). Section 1(2) confined the application of the Act to transportation "only in so far as such transportation takes place within the United States." However, by the Panama Canal Act, Congress provided that "in addition to the jurisdiction given by the Act to regulate commerce"

> "When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise * * * the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars."

It must be assumed that in referring to transportation "by rail and water through the Panama Canal or otherwise", Congress well understood that water carriers operating between the Atlantic and Gulf ports or between the Atlantic and Pacific coasts or on the Great Lakes, who might engage in transportation "from point to point in the United States by rail and water through the Panama Canal or otherwise", necessarily could not confine the movements of their vessels wholly "within the United States" and might well cause their vessels to pass through the territorial waters of nearby foreign countries. It is a fair inference, therefore, that Congress intended to insure that the Commission should have adequate jurisdiction of through transportation under these circumstances and that the clauses of this section should have application unconfined by the language of Section 1(2).

Were this not so the additional jurisdiction which Congress sought to confer upon the Commission might be wholly defeated by a carrier through the simple medium of causing its vessels to go outside the limits of the United States or pass along the coast of some foreign island.

By clause (a) of this provision of the Panama Canal Act, which became subdivision (13) (now subdivision (11))

of Section 6 of the Interstate Commerce Act, the Commission was authorized to establish physical connection between the lines of the rail carrier and the dock of the water carrier, and by clause (b) it was given authority "to establish through routes * * * between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated." This Court held that these provisions were intended to increase the jurisdiction of the Commission where water transportation is concerned, *United States* v. *N. Y. Cent. R. R.*, 272 U. S. 457, 462.

If language is to be given its ordinary meaning, it seems plain that under these provisions, which were in effect when the present proceeding was instituted before the Commission, the Commission then had authority, notwithstanding the fact that Seatrain's vessels pass outside the limits of United States territorial waters, to establish through routes for rail and water transportation in connection with Seatrain, and as a part of its jurisdiction, "to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced". Clearly this gave it authority to require that the petitioners permit their cars to be interchanged with Seatrain in the performance of through transportation.

The reasoning of the court below and the argument of petitioners here rest chiefly upon the fact that by the Transportation Act, 1940, Congress eliminated subdivision (b) of Section 13, above quoted.

Certainly in view of the history of the Act, evidencing a tendency on the part of Congress constantly to increase rather than decrease the Commission's authority and to promote the development of an integrated transportation system, if Congress had actually meant to diminish the Commission's authority over rail and water transportation, the most clear and emphatic language would have been used and evidence of such a purpose would be found in the Congressional debates and in the reports of the Committees. Such evidence is totally lacking.

On the contrary, as a part of the 1940 Act, Congress adopted a declaration whereby it said that it was the declared national transportation policy

> "to promote safe, adequate, economical and efficient service * * * among the several carriers * * * to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

And Congress said that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

That Congress intended that the Commission should retain the powers conferred upon it by the Panama Canal Act is evident from the remarks of those closely associated with the passage of the Transportation Act, 1940. Thus, in a letter from the late Joseph B. Eastman, then Chairman of the Legislative Committee, Interstate Commerce Commission, to the Chairman of the Senate Interstate Commerce Committee and the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives, containing an analysis of the Transportation Act prior to its enactment by Congress, the following appears at page 23:*

> "*House bill.*—This bill leaves the Panama Canal Act provisions in section 6(13) undisturbed, except that it repeals 'subparagraph (b)'. See section 9 of the House bill. We have no criticism of this repeal, for that subparagraph deals with through routes and joint rates between rail and water lines, and *other provisions of the bill adequately cover this matter.*"

The reason for the repeal of sub-paragraph (b) of Section 6(13), as explained by Chairman Lea of the House Committee, in the Committee's Report No. 1217 on the

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* House Committee Print, 76th Congress, 3rd Session, dated January 29, 1940.

Transportation Act of 1939, which subsequently was entitled Transportation Act of 1940, was:

> "Section 9 repeals subparagraph (b) of paragraph (13) of section 6. That subparagraph as now in effect limits the Commission's jurisdiction with respect to the establishment of through routes and joint rates by rail and water by providing that the Commission may prescribe only the maximum joint rate that may be charged. The bill gives the Commission full authority over rates by water carriers including authority to prescribe both the minimum and the maximum joint rail and water rates. It was necessary to repeal the subparagraph in paragraph (13) of section 6 which limits the authority as aforesaid."

In the report of the Commission in these proceedings, Commissioner Eastman said (R. 62):

> "Defendants now urge that their argument has received additional support through the repeal of the former section 6(13)(b) by the Transportation Act of 1940. Insofar as the enactment of the latter measure is concerned, we regard it as confirming our jurisdiction in the present premises, as Congress reenacted section 1(4) with no material change in wording, presumably with full knowledge of the interpretation of that section followed in our first report in these proceedings."

It must be recalled that the 1940 Act was passed after the Commission had rendered its earlier decisions asserting its jurisdiction, and had the Congress intended that the Commission should not have the authority which it claimed, it would have so indicated by clear and precise language. It is plain that Section 6(13)(b) was eliminated, not for the purpose of diminishing the Commission's jurisdiction, but to prevent possible ambiguities and because the addition of Part III to the Act and the amendment made in Sections 1(4) and 3(4) gave the Commission broad powers

over through transportation by rail and water and the carriers participating therein.

It is reasonable to infer also that the clause of Section 1(2) upon which petitioners and the court below rely, whereby the application of Part I is limited to transportation "only in so far as such transportation takes place within the United States", was left in the statute for the reason that Part I is designed to have application primarily to railroads and the territorial jurisdiction of the Commission over the rights of way and fixed physical properties of railroads is obviously limited to the portions thereof within the territorial limits of the country. This accounts for the decisions cited on page 49 of petitioners' brief which involved rail transportation only and in which the Commission held that it did not have jurisdiction to require rail carriers located partly in the United States and partly in an adjacent foreign country to establish through routes.

But where water carriers are concerned the situation is different. From a physical standpoint it is obvious, as we have said that water carriers, in the nature of things, must go upon the high seas or may pass through foreign territorial waters when engaged in transportation between points in the United States.

This practical difference was recognized by Congress in enacting Part III, which in Section 302(i) defined interstate transportation for the purposes of that part as meaning transportation

> "partly by water and partly by railroad or motor vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States, and shall include *transportation by water only insofar as it takes place from a place in the United States to another place in the United States.*" (Italics ours.)

By the 1940 Act Congress also amended Section 1(4) to provide specifically that carriers subject to Part I were under a duty to

> "establish reasonable through routes *with carriers by water subject to part III.*" (Italics ours.)

And it was made their duty also to

> "provide reasonable facilities for operating *such* routes and to make reasonable rules and regulations with respect to their operation * * *." (Italics ours.)

This latter language, taken in connection with the provision of Section 302(i), above quoted, can have no other meaning than that rail carriers, such as petitioners, are under a duty to establish and provide reasonable facilities for operating reasonable through routes with water carriers like Seatrain whose operations may take them outside the United States, but which are subject to Part III in so far as they perform transportation

> "from a place in the United States to another place in the United States."

This description fits perfectly the situation of petitioners and Seatrain. The decision of the court below does violence to the language and the plain intention of Congress.

D. The Commission's order does not involve an invalid attempt to exercise authority extraterritorially.

On page 50 of their brief, petitioners endeavor to convey the impression that the Commission's order is invalid because it has extraterritorial effect and would make petitioners' cars "subject to attachment or libel, and to seizure, not only by process of the United States Courts, but also by a foreign sovereignty."

It is submitted that the order involves no undue and invalid extraterritorial application and is not invalid for the reasons urged by petitioners.

As the Court well knows, there has been a great deal of regulatory legislation with respect to the activities of water carriers not only in the United States but when their vessels are in foreign ports. Thus, we have the rules for navigation at sea, U. S. C. A. Title 33, Section 61 ff. Then there are various statutes affecting the rights of crews and the obligations of masters of vessels with respect to seamen, which contain requirements and provide rights which take effect when American vessels are in foreign ports; U. S. C. A. Title 46, Sections 564-573. There are the provisions of the Shipping Act, 1916, prohibiting discrimination by water carriers in the foreign trade operating to and from the ports of this country which have been held to prohibit discrimination practiced by such carriers in a foreign country, *Compagnie Generale Transatlantique* v. *American Tobacco Co.*, 31 F. (2d) 663.

If such legislation is valid, it certainly cannot be seriously claimed that there is any objection, so far as sovereign authority is concerned, to legislation empowering the Commission to require the establishment of through routes between points in the United States in connection with an American water carrier operating to and from American ports resulting from the fact that the vessels of the water carrier may call at intermediate foreign ports or pass through foreign territorial waters. And the same must be true in so far as requiring reasonable facilities for the operation of such through routes and the performance of through transportation.

Seatrain's ships are American flag vessels. They operate to and from American ports. There is, therefore, ample means of enforcing any requirements in so far as Seatrain's performance of the through transportation is concerned and of protecting as against Seatrain the rights of petitioners in connection with such through transportation and the use of their facilities therefor.

The situation here is radically different from that in *St. Louis etc. Ry.* v. *Brownsville Dist.*, 304 U. S. 295, cited by petitioners on pages 44 and 49 of their brief. That case was a suit for mandamus to compel certain railroads

to furnish cars for the transportation of freight from the Mexican border to a point in Mexico. Congress had not attempted to give the Commission authority to order through routes from a point in the United States to a point in Mexico and the Court found that there was no joint rate applicable to the transportation involved. Moreover, Congress could not confer upon the Commission any enforceable jurisdiction over railroads entirely in Mexico. Therefore, the remark of the Court in that case that "Petitioners are not bound by any law, regulation or tariff to furnish cars for transportation in Mexico", is far from saying that regulation by Congress through the medium of the Commission of transportation between points in the United States is impossible under the circumstances here.

Were it necessary, an argument might be made based upon the principle that nationality follows the vessel, even into a foreign port; and that since Seatrain's vessels are American flag ships, petitioners' cars are on American territory even when the vessels are in the harbor of Havana. The principle is thus stated by H. Taylor, International Public Law, Section 268:

> "As Mr. Webster said in the case of *The Creole*, 'the rule of law and the comity and practice of nations allow a merchant vessel coming into any open port of another country voluntarily, for the purpose of lawful trade, to bring with her and keep over her to a very considerable extent the jurisdiction and authority of the laws of her own country. A ship, say the publicists, though at anchor in a foreign harbor, possesses its jurisdiction and its laws * * *'."

See also Moore on International Law, Vol. 2, page 292; Halleck on International Law (1908), 4th Ed. Vol. 1, pages 245-246; *Wildenhus's Case*, 120 U. S. 1, 12.

In the case of *United States* v. *Rodgers*, 150 U. S. 249, this Court, at pages 264 and 265, quoted with approval an expression of Daniel Webster, saying:

> "Upon that subject we quote the language of Mr. Webster, while Secretary of State, in his letter to Lord

Ashburton of August, 1842. Speaking for the government of the United States, he stated with great clearness and force the doctrine which is now recognized by all countries. He said: "*It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the State retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion.* * * * It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. * * * But, nevertheless, *the law of nations*, as I have stated it, *and the statutes of governments founded on that law*, as I have referred to them, *show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or whereso-ever else they may be waterborne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.*' 6 Webster's Works, 306, 307." (Italics ours.)

This doctrine was affirmed in *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 129, where this Court said:

"In so saying we do not mean to imply that Congress is without power to regulate the conduct of domestic merchant ships when on the high seas, or to exert such control over them when in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign; for it long has been settled that Congress does have such power over them. *Lord* v. *Steamship Co.*, 102 U. S. 541; *The Abby Dodge*, 223 U. S. 166, 176."

In the past, Cuba has exercised no authority over railroad cars in interstate service found on Seatrain vessels in Havana. In *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 14, the Commission found:

"that when the vessels call at Havana, cars containing interstate freight are placed under United States

> custom seals at the port of departure and remain so until arrival at the port of destination, and the freight contained in such cars is not made accessible to the Cuban authorities; that three sets of manifests are made out at the port of departure, one required by the Cuban authorities and another required by the United States customs relate to freight for Cuba, and the third, which shows only the cars moving in interstate commerce, is given the Cuban customs inspector as a matter of information; that *no Cuban official has ever attempted to take jurisdiction over the interstate freight;* * * *." (Italics ours.)

Plainly petitioners cannot assert that the Commission's order is invalid because of any fundamental lack of authority or because of conflicting sovereignty resulting from the route ordinarily followed by Seatrain's ships.

E. In so far as petitioners are concerned, the Commission's order operates within the United States.

Finally, it is submitted that even if the court below and the petitioners were correct in all of their arguments as to the interpretation, application, and effect of the provisions of the Act in so far as this point is concerned, and if the duty of petitioners as railroads were strictly limited to matters occurring within the territorial limits of the United States, still the Commission's order should not be held invalid. It is submitted that the argument of petitioners and the reasoning of the lower court rest upon a misconception of what is required of petitioners by the Commission's order and by the Act.

The term "transportation" is defined in Section 1(3) as including "cars * * * and all instrumentalities and facilities of shipment or carriage, irrespective of ownership." By Section 1(4) it is made the "duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor." When a shipper at Harrisburg requests the Pennsylvania to furnish transportation for his goods to Dallas, Texas, *via* Seatrain, it is the obligation of the Pennsylvania to

provide a car for loading. With a large proportion of the railroads of the country consenting to the interchange of their cars with Seatrain, the Pennsylvania cannot fairly assert that it is required to do the impossible if it is compelled to furnish a car which can be used for the through shipment. Hence when it furnishes one of its own cars instead of a car of a consenting railroad, it has not fulfilled its duty to provide reasonable facilities, if it attaches to that car a requirement that because of its ownership of the car the shipment must be unloaded at the waterfront. The particular point here is that everything which is required of the Pennsylvania—namely, the furnishing of a car which can be used for the through shipment—is required to be done by it within the United States, just as it is required in the United States to file tariffs naming joint through rates and to issue a bill of lading contract for the through shipment and just as it is required in the United States to perform its portion of the through haul.

For these reasons we submit that the Commission's order is not rendered invalid by the fact that Seatrain's vessels operate outside the territorial waters of this country and ordinarily call at Havana in carrying goods in interstate commerce, and that the decision of the court below to the contrary should be reversed.

POINT III

There is no merit in the petitioners' contention that the Commission's order is confiscatory or that it is invalid in other respects.

A. **As to the compensation to be paid to petitioners for their cars.**

What is reasonable compensation to be paid by one carrier to another for the use of cars owned by the latter, and the terms and conditions under which interchange of cars should be required, are matters peculiarly within the informed judgment of the Commission and, if its conclu-

sions are supported by substantial evidence, they should not be disturbed unless its order will result in the confiscation of petitioners' property. *Chicago, R. I. & P. Ry. Co.* v. *U. S.*, 284 U. S. 80, 91, 95.

There can be no doubt here both that there was substantial evidence to support the Commission's conclusions and that the Commission gave serious and detailed consideration thereto. The record includes many statistical exhibits and hundred of pages of oral testimony on the subject of compensation for cars. The evidence was reviewed by Commissioner Eastman, writing the report of the Commission, at pages 62 to 70 of the record. Every one of the contentions urged on this Court by petitioners (Brief, pp. 68-79) was weighed and discussed in the report in the light of the evidence.

In so far as confiscation is now claimed, it is submitted that the allegations of the petition do not raise an issue of confiscation with the particularity required in order to present to the Court an issue of violation of the Fifth Amendment.

In *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 447-448, it was said:

> "Allegations asserting in general language that the findings, order and reduced rates are confiscatory and repugnant to the Fourteenth Amendment are not sufficient. In order to invoke the constitutional protection, the facts relied on to restrain the enforcement of rates prescribed under the sanction of state law must be specifically set forth, and from them it must clearly appear that the rates would necessarily deny to the plaintiff just compensation and deprive it of its property without due process of law. *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298, 314; *Atlantic Coast Line* v. *Florida*, 203 U. S. 256."

This decision was cited by the Court in its opinion in *Beaumont, S. L. & W. Ry.* v. *U. S.*, 282 U. S. 74, 88-89, where it again said:

> "It is well established by the decisions of this court that, in order to invoke such constitutional protection, the facts relied upon to prevent enforcement of rates prescribed by governmental authority must be specifically alleged and from them it must clearly appear that the enforcement of the measure complained of will necessarily deny to the utility the just compensation safeguarded to it by the Constitution."

The general allegations in paragraph XIX of the petition do not meet these standards and afford no foundation for a claim here that the Commission's order will deprive any of the petitioners of its property in violation of the Fifth Amendment.

Moreover, the following facts disclosed by the record may be noted as confirmation both that the Commission's determination was supported by substantial evidence and that its order is not confiscatory.

1. The compensation determined by the Commission as reasonable, *i. e.*, $1.00 per car per day to be paid to car owners for their cars while in Seatrain's possession, is the standard rate of compensation paid by one carrier to another whose cars are on its line and has been approved by the Commission as constituting, on the average, full compensation for the cost of car ownership and maintenance. *Rules for Car Hire Settlement*, 160 I. C. C. 369.

2. Prior to the inauguration by Seatrain of its service between New York and New Orleans, and at the time when Seatrain or its predecessor operated solely between New Orleans and Havana, all of the carriers of the country, including petitioners, consented to the delivery of their cars to Seatrain at the going per diem rate of $1.00 per day (R. 65).

3. Eight of the present petitioners, although joining in the contention here that $1.00 per day is not adequate compensation for their cars when used for the through transportation of interstate shipments, nevertheless permit their cars to be transported to Cuba by Seatrain on the

basis of payment to them of the established rate of $1.00 per day (R. 66, 81).

4. There is no carrier in the country which is called upon to pay more than $1.00 per day for standard box cars owned by another railroad (R. 66).

5. When this proceeding was instituted by the Hoboken and the Lower Coast, the defendant railroads, including petitioners, made no contention that the going per diem rate would be inadequate. They did not question the amount of the compensation to be received by them until nearly six years later when, on August 1, 1938, they filed their reply to the motions of the Hoboken and the Lower Coast for the entry of an order because of petitioners' failure to comply with the Commission's decision (R. 674, 679).

6. Of the average cost of car ownership and operation, upon which the per diem rate of $1.00 per car is predicated, a very large proportion consists of maintenance and repair expense made necessary by damage to cars received when being switched, handled in railroad yards or hauled in trains. These injuries to cars are avoided and the maintenance expense caused thereby is eliminated during the days when the cars are upon Seatrain's ships, where they do not move and are to a large extent protected from the weather. Petitioners themselves concede that 61.5 per cent of the average running repair expense per car per day is avoided when cars are not moving (R. 63).

7. The uncontradicted testimony of railroad operating men was to the effect that cars received from Seatrain ships are in much better condition and require less repairs than cars received from connecting rail carriers (R. 332-350, 1079-1099).

8. While petitioners argue that Seatrain should pay more because it does not itself own cars, the evidence shows and the Commission found: (a) that there are many railroads which do not own cars but that none of them is required to pay more than the established per diem rate

of $1.00 per day; (b) that the per diem rate is based upon the cost to the car owners and is not proportioned to the number of cars owned by the different railroads; (c) that Seatrain has offered, whenever car conditions of the country make it desirable, to acquire a fleet of cars which it would interchange with the railroads, and for which they would have to pay it compensation when the cars should be in their possession; (d) that the chairman of the Car Service Division of the Association of American Railroads, called as a witness on behalf of the petitioners, was unwilling to testify that it would be desirable that Seatrain should acquire a fleet of cars to add to the then existing car pool, thereby increasing the idle time of cars and the car expense for all concerned; and (e) that Seatrain has rented cars which it has furnished to the railroads in connection with through transportation via its line.

With such evidence before the Commission to support its findings it is submitted that this Court cannot properly conclude that the Commission's order was either arbitrary or confiscatory or that if petitioners receive the established per diem rate for their cars when in Seatrain's possession, they will be deprived of their property without just compensation.

B. **As to the period for which per diem is payable by Seatrain.**

One of the contentions strenuously urged upon the Commission by petitioners was that Seatrain should be required to pay the per diem expense on cars, not only while the cars are in its possession, but also while they are in the possession of the rail carriers at the ports awaiting delivery to Seatrain's vessels. Petitioners make the same contention here and urge that the court below erred in not setting aside the Commission's order because it failed to contain such a requirement (Brief, pp. 57-68).

The question is one whose answer does not affect the amount of compensation to be received by any of the peti-

tioners as the owner of cars and, therefore, involves no issue of confiscation. The question is rather who should pay the per diem to the owners on all cars, whether owned by petitioners or others, during the several days that they may be held at the port awaiting delivery to a Seatrain ship—whether this should be paid by the railroad holding the cars or by Seatrain. Moreover, most of the petitioners can have no practical interest in the question. Its answer does not affect the Pennsylvania since it is not the final railroad at New York delivering the car to the Hoboken. It receives its per diem in any event, whether it is paid by Seatrain or by the Hoboken or New York Central. Such railroads as the Boston & Maine and Northern Pacific, whose rails are far from both New York Harbor and New Orleans, are not affected. They, too, receive their per diem from someone. The only petitioners who may have any stake in the question are four, the Southern, Louisville & Nashville, Southern Pacific, and Texas & New Orleans, and whether they have any interest in the matter depends upon their arrangement with the Lower Coast.

Whether the per diem expense on cars held at New Orleans should be borne by Seatrain or by one of these four rail carriers serving that port depends upon whether under the rates or divisions of rates the rail carriers or Seatrain have assumed the undertaking to hold the cars and pay the per diem. This is obviously a question whose determination is peculiarly within the functions of the Commission. *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

The Commission after careful consideration, has found that in the case of freight moving by rail and water, the railroad freight rates, and the divisions thereof as between the carriers concerned, are adjusted on the basis that the expense of holding the freight at the ports, including car detention, awaiting transfer to the on-carrying vessels of a water carrier, is to be assumed by the railroads serving the ports. The Commission concluded that there was no

reason for a different practice in so far as Seatrain was concerned.

Since there was substantial evidence to support this decision, it should not now be disturbed.

C. As to the form of the order.

Petitioners contend (Brief, pp. 52-56) that the Commission's order is invalid because it does not by its terms affirmatively direct Seatrain to pay per diem to petitioners for their cars.

The order was entered in a complaint proceeding in which petitioners were defendants and Seatrain was a complainant. The complaints alleged that petitioners' refusals to permit the interchange of their cars with Seatrain's vessels in the performance of through transportation over through routes were unlawful and a "cease and desist" order was sought directing petitioners and the other defendants to cease and desist from their unlawful conduct. This was, in effect, the nature of the Commission's order. There was no occasion for an order against Seatrain.

Moreover, petitioners are amply protected. The Commission's reports are made a part of its orders. The clear intention of all of them is that the petitioners are under no obligation to permit their cars to be transferred to Seatrain unless as car owners they receive the compensation determined by the Commission to be reasonable.

Furthermore, petitioners are really not in a position to attack the Commission's order on the ground here discussed because, by reason of their own action, it would be impossible for the Commission to make its order in the form for which they now contend.

Settlement for car hire between carriers is conducted under the form of a contract, called the Car Service and Per Diem Agreement, to which the several petitioners are signatories and which is administered by the Association of American Railroads (R. 450). When Seatrain's predecessor began operation between New Orleans and Havana, it applied to become a member of the Association and a

party to the Car Service and Per Diem Agreement (R. 214, 540). It was advised that it could not do so because it was a water carrier and the agreement was confined to railroads (R. 214). Thereupon an arrangement was worked out whereby the Lower Coast, as the last rail carrier, party to the per diem agreement, undertook the responsibility to all owning railroads for the payment of per diem on their cars when delivered to Seatrain, and Seatrain in turn entered into a contract with the Lower Coast to reimburse it for the per diem expense of cars while such cars were in Seatrain's possession (R. 214-226, 544). When Seatrain was arranging for the inauguration of its service between New York and New Orleans, the question of the method of settlement was again raised. The head of the Car Service Division of the Association of American Railroads advised that the situation was the same, that the Hoboken as the final rail carrier would be responsible for the payment of per diem to car owners under the Per Diem Agreement, and that, in accordance with the rules of the Association, Seatrain, as a non-subscriber, should enter into a contract to reimburse the Hoboken and make settlement with it rather than make payments directly to the railroads owning cars (R. 858-59). Seatrain has indicated on the record that it is ready and willing to become a member of the Association of American Railroads and a party to the Car Service and Per Diem Agreement, and to pay per diem directly to the owners of the car (R. 71), but this cannot be done unless the Association of American Railroads amends the agreement to make possible the admission thereto of water carriers. This, so far, has not occurred (R. 859).

Under the circumstances, it is plain that the Commission's order is not defective in failing to require Seatrain to make payment of per diem directly to petitioners and that the court below did not err in declining to set aside the Commission's order on this ground. On the contrary, the Commission's order is in strict conformity with the Per

Diem Rules maintained by petitioners and other members of the Association of American Railroads.

It may be said further that this conclusion finds further support in the decision of this Court in *Chicago, R. I. & P. Ry. Co.* v. *United States, supra*, 284 U. S. 80. That case involved an order of the Commission made in a proceeding to investigate the rules for car hire settlement between common carriers by railroad in the United States for the use and detention of freight cars while on the lines of carriers other than their owners (p. 87). The Commission made an order containing five numbered paragraphs. Paragraph 3 of the order read as follows:

> "(3) That short-line railroads which are less than 100 miles in length, and which return railroad-owned equipment to the road from which received, shall not be required to report per diem accruals to numerous car owners throughout the country, but shall be attached to their connecting carriers for purpose of car-hire settlement."

In other words the Commission decided that the short-line non-subscribers should, as does Seatrain, make reports and payments to their immediate connections and should not be required to pay the car owners directly. In upholding this part of the Commission's order, this Court said, at pages 95 and 96:

> "The Commission is a body of trained and experienced experts, and in respect of such matters a reasonable degree of latitude must be allowed for the exercise of its judgment. * * * Primarily, the question is an administrative one, and unless the limits of reasonable regulation be transcended, the courts may not interfere. The Commission concluded that the circumstances afforded warrant for requiring that class of railroads which generally owned the cars, which was best equipped to perform the clerical work, and which would receive the most in the way of compensating and offsetting benefits, to perform a larger proportion of the service of keeping and rendering the

counts. In doing so, we are of opinion that it did not transcend the limits of reasonable regulation, and that the claim of confiscation is not sustained."

Under the authority of this case it is clear that the Commission's order herein cannot be held invalid simply because it does not require Seatrain to make payment directly to the car owners.

Conclusion

For the reasons set forth herein, the decision of the court below should be reversed in so far as it held invalid, set aside or operated to nullify the Commission's order, but in all other respects it should be affirmed.

Respectfully submitted,

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December 28, 1944.

Appendix

The National Transportation Policy, as set forth in the Transportation Act of 1940, is as follows (54 Stat. 899):

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Part I of the Interstate Commerce Act, February 4, 1887, c. 104, 24 Stat. 379, as amended.

Section 1(1)(a) and (b) provides in part:

> That the provisions of this part shall apply to common carriers engaged in—
>
> The transportation of passengers or property wholly by railroad, * * *;
>
> * * * * *
>
> —from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United

States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States. (49 U. S. C. 1(1)(a) and (b).)

Section 1(3)(a) provides:

The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier". The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this part includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes a trustee, receiver, assignee, or personal representative thereof. (49 U. S. C. 1(3)(a).)

Section 1(4) provides:

It shall be the duty of every common carrier subject to this part to provide and furnish transporta-

tion upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers. (49 U. S. C. 1(4).)

Section 1(10) provides:

The term "car service" in this part shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this part. (49 U. S. C. 1(10).)

Section 1(11) provides:

It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful. (49 U. S. C. 1(11).)

Section 1(13) provides:

The Commission is hereby authorized by general or special orders to require all carriers by railroad sub-

ject to this part, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this part relating thereto. (49 U. S. C. 1(13).)

Section 1(14)(a) provides:

The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), and the penalties or other sanctions for nonobservance of such rules, regulations, or practices. (49 U. S. C. 1(14)(a).)

Section 3(4) provides:

All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III. (49 U. S. C. 3(4).)

Section 6(13)(b) prior to the amendment effected by the Transportation Act, 1940, provides:

When property may be or is transported from point to point in the United States by rail and water through

the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

* * * * *

(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced. (49 U. S. C. 6(13).)

Section 15(1) provides:

That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that

the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. (49 U. S. C. 15(1).)

Section 15(3) provides:

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section. (49 U. S. C. 15(3).)

Section 15(8) provides:

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this part to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this part provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however*, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported. (49 U. S. C. 15(8).)

Section 20(11) provides:

That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such

property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; * * *. (49 U. S. C. 20(11).)

Part III of the Interstate Commerce Act, February 4, 1887, c. 104, 24 Stat. 379, as amended.

Section 302(d) provides:

The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except transportation by water by an express company subject to part I in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to part I. (49 U. S. C. 902(d).)

Section 302(i)(2) provides:

(i) The term "interstate or foreign transportation" or "transportation in interstate or foreign commerce", as used in this part, means transportation of persons or property—

* * * * *

(2) partly by water and partly by railroad or motor vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States, and shall include transportation by water only insofar as it takes place from a place in the United States to another place in the United States;

* * * * *

(49 U. S. C. 902(i)(2).)

Section 303(a) provides:

> In the case of transportation which is subject both to this part and part I, the provisions of part I shall apply only to the extent that part I imposes, with respect to such transportation, requirements not imposed by the provisions of this part. (49 U. S. C. 903(a).)

Section 305(b) provides:

> It shall be the duty of common carriers by water to establish reasonable through routes with other such carriers and with common carriers by railroad, for the transportation of persons or property, and just and reasonable rates, fares, charges, and classifications applicable thereto, and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto. Common carriers by water may establish reasonable through routes and rates, fares, charges, and classifications applicable thereto with common carriers by motor vehicle. In the case of joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such carriers. (49 U. S. C. 905(b).)

Section 305(d) provides:

> All common carriers by water shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this subsection the term "connecting line" means the connecting line of any common carrier by water or any common carrier subject to part I. (49 U. S. C. 905(d).)

Section 307(d) provides:

> The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and carriers by railroad, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water. If any tariff or schedule cancelling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of section 15. (49 U. S. C. 907(d).)

SUPREME COURT OF THE UNITED STATES.

Nos. 47 and 48.—October Term, 1944.

The United States of America, Interstate Commerce Commission, Seatrain Lines, Inc., et al., Appellants, 47 *vs.* The Pennsylvania Railroad Company, et al.	Appeals from the District Court of the United States for the District of New Jersey.
The Pennsylvania Railroad Company, et al., Appellants, 48 *vs.* The United States of America, Interstate Commerce Commission, Seatrain Lines, Inc., et al.	

[January 29, 1945.]

Mr. Justice Black delivered the opinion of the Court.

Seatrain Lines, Inc., is a common carrier of goods by water. In 1929, its predecessor began to carry goods from Belle Chasse, Louisiana, to Havana, Cuba. Each of the vessels used was so constructed that it could carry a number of railroad cars, and special equipment was provided to hoist these cars from adjacent tracks on the docks and move them bodily into the vessels. It was thereby rendered unnecessary for goods carried to the ports in railriad cars to be unloaded from the cars and carried piecemeal into the vessels. This new method of transportation, so the Interstate Commerce Commission has found, was a great improvement over the old practice, less destructive to the goods, more economical and more efficient. 226 I. C. C. 7, 20-21. In 1932, Seatrain decided to initiate a new interstate service between Hoboken, N. J. and Belle Chasse, Louisiana, via Havana, Cuba, and thus entered into direct competition with the interstate transportation of freight by railroads. During the time Seatrain had limited its business to foreign transportation, i. e., Louisiana to Cuba, the non-competing railroads freely permitted it the use of their cars. Shortly after it began its interstate service, how-

ever, the following rule was promulgated by the American Railway Association:[1] "Cars of railway ownership must not be delivered to a steamship, ferry, or barge line for water transportation without permission of the owner filed with the Car Service Division." Thereafter, some railroads continued to permit Seatrain to use their cars but others, including the parties to this proceeding, refused to do so. No railroads "refused to permit delivery of their cars to any of the other eleven water lines listed in a circular of the Association as coming within the intendment of the rule." 206 I. C. C. 328, 337.

A complaint was filed with the Interstate Commerce Commission. Appropriate hearings were conducted and a series of findings and opinions were entered. The findings were that the sole object of the Association of Railroads' rule was to prevent diversion of traffic from the railroads to Seatrain; that Seatrain, as an interstate water carrier, was subject to the Commission's jurisdiction; that its interstate operations were in the public interest and of advantage to the convenience and commerce of the public; that the Commission had jurisdiction to require through rail-water interstate routes, and, where such through routes were established, to require railroads to interchange cars with water carriers, 195 I. C. C. 215; 206 I. C. C. 328. An initial order of the Commission required the railroads to establish certain through joint rail-water routes with Seatrain. Such through interstate routes together with joint rates were established. 226 I. C. C. 7; 243 I. C. C. 193. The Commission then heard evidence and found that a payment of $1.00 per day would be a reasonable amount for Seatrain to pay the railroads for their cars while they were in Seatrain's possession. 237 I. C. C. 97; 248 I. C. C. 109. Based on its findings the Commission ordered the railroads to abstain from observing and enforcing rules and practices which prohibited the interchange of their freight cars for transportation by Seatrain in interstate commerce. The railroads promptly brought this action under 28 U. S. C. 41 (28), 47, to set aside the Commission's order. The District Court set aside the order insofar as it required railroads to interchange cars destined for carriage by Seatrain outside the territorial waters of the United States, but sustained it in all other respects. 55 F. Supp. 473. Both sides

[1] Later the American Railway Association, and other railroad organizations consolidated their activities under the name of the Association of American Railroads. The new Association adopted the same rule.

appealed directly to this Court as authorized by the Urgent Deficiencies Act of October 22, 1913, 28 U. S. C. 47, 47a, and Section 238 of the Judicial Code, 28 U. S. C. 345, par. (4).

First. It is contended that the railroads are under no duty to deliver their cars to Seatrain and that the Interstate Commerce Commission is without authority to require them to do so. It has long been held, and it is not denied here, that since the passage of the Interstate Commerce Act, railroads may be compelled to establish through routes[2] and to interchange their cars with each other,[3] both subject to reasonable terms. Nor is it denied that the railroads are under a legal duty, enforceable by proper Commission orders, to establish through routes with connecting water carriers.[4] The narrow contention is that the power granted the Commission to require establishment and operation of through rail-water routes does not empower it to require a railroad to interchange its cars with a water carrier. Since the Commission's order was entered after passage of the 1940 Transportation Act, 54 Stat. 898, the question must be decided under that Act. *Ziffrin, Inc.* v. *United States*, 318 U. S. 73, 78.

There is no language in the present Act, which specifically commands that railroads must interchange their cars with connecting water lines. We cannot agree with the contention that the absence of specific language indicates a purpose of Congress not to require such an interchange. True, Congress has specified with precise language some obligations which railroads must assume. But all legislation dealing with this problem since the first Act in 1887, 24 Stat. 379, has contained broad language to indicate the scope of the law. The very complexities of the subject have necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action, and in the light of the Congressional purpose to foster an efficient and fair national transportation system. Cf.

[2] St. Louis S. W. Ry. Co. v. United States, 245 U. S. 136, 142-144.

[3] Missouri & Illinois Coal Company v. Illinois Central Railroad Co., 22 I. C. C. 39, 44; Chicago, R. I. & P. Ry. Co. v. United States, 284 U. S. 80, 91, 101-102; cf. St. Louis, S. W. Ry. v. Arkansas, 217 U. S. 136, 145-146.

[4] Such has long been the ruling of the Interstate Commerce Commission. Chattanooga Packet Co. v. I. C. C. R. R. Co., 33 I. C. C. 384, 391-392; Flour City S. S. Co. v. Lehigh Valley R. Co., 24 I. C. C. 179; Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288; Pac. Navigation Co. v. Southern Pac. Co., 31 I. C. C. 472, 479.

Chicago, R. I. & P. Ry. v. *United States*, 274 U. S. 29, 36; *I. C. C* v. *Railway Labor Executives Ass'n*, 315 U. S. 373, 376-377.

The 1940 Transportation Act is divided into three parts, the first relating to railroads, the second to motor vehicles, and the third to water carriers. That Act, as had each previous amendment of the original 1887 Act, expanded the scope of regulation in this field, and correlatively broadened the Commission's powers. The interrelationship of the three parts of the Act was made manifest by its declaration of a "national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each". The declared objective was that of "developing, coordinating and preserving a national transportation system by water, highway and rail, . . . adequate to meet the needs of the commerce of the United States . . ." Congress further admonished that "all of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy." 54 Stat. 899.

This policy cannot be carried out as to Seatrain's interstate carriage unless railroads interchange their cars with it. The particular type of service introduced by Seatrain, and found by the Commission to be qualitatively superior, cannot be rendered without the privilege of carrying the very railroad cars which carry freight to its ports. The "inherent advantages of this service" would be lost to the public without railroad car interchange.

Furthermore, the Act calls for "fair and impartial regulation." The railroad Association's rule however is constructed on the premise that the railroads can at their discretion determine which water carrier may, and which may not, transport their cars. Seatrain alone, of all the water carriers, according to the Commission's findings, has been refused car interchange. This means that the Association's rule, if valid, enables the railroads to decline to deal with Seatrain as it does with other carriers. As early as 1914, the Commission had declared that the Interstate Commerce Act, as then in effect, prohibited railroad practices which lent themselves to such purpose. The Commission said at that time:

"If the rail carriers are permitted to choose the particular boat lines with which they will establish through routes and joint

rates, they will be able to dictate who shall operate on the water and who shall not, for a boat line which is accorded a monopoly of the through rail-and-water traffic will soon be able to drive its competitors out of business." *Pac. Navigation Co.* v. *Southern Pacific Co.*, 31 I. C. C. 472, 479.

We cannot agree with the contention that the Commission has less power now to protect water carriers than it had in 1914.[5] The 1940 Act was intended, together with the old law, to provide a completely integrated interstate regulatory system over motor, railroad, and water carriers. In the light of its declared policy, and because of its provisions hereafter noted, we think railroads are under a duty to provide interchange of cars with water carriers to the end that interstate commerce may move without interruption or delay. *Cf. Flour City S. S. Co.* v. *L. V. R. Co.*, 24 I. C. C. 179, 184.

[5] This argument rests on a historical analysis of provisions in the original Act and later amendments which impose specific duties as to car interchanges. A detailed and clear narrative of the history appears in the opinion of the District Court. 55 F. Supp., *supra*, 479-483. In summary the argument is this. The original 1887 Act applying only to railroads, 24 Stat. 379, required in Section 3, an "interchange of traffic" but did not specifically provide for an interchange of cars. The Hepburn Amendment of 1906, 34 Stat. 584, subjected water carriers to the Act so far as they connected with railroads in interstate commerce, defined transportation to include "cars" and "facilities", and made it the duty of railroads to establish through routes. The Mann-Elkins Amendment of 1910, 36 Stat. 539, 545, required carriers to make reasonable rules and regulations to provide for "exchange, interchange, and return of cars" used on through routes. The Esch Car Service Act of 1917, 40 Stat. 101, again required interchange of cars, and specifically gave the Commission power to establish rules to enforce the requirement. The Transportation Act of 1920, 41 Stat. 456, 476, omitted the exact language of the car interchange requirement which had appeared in the 1910 Mann-Elkins Amendment, but substituted for it Sections 1(10)(11) (13) and (14) which contained more elaborate language imposing still more specific duties in this respect. These "car service" provisions were not changed by the 1940 Transportation Act. The Mann-Elkins and the Esch Car Service Amendments, however, had made the car interchange provisions applicable to every "carrier subject to the provisions of this Act." The 1920 Act made the car service provisions applicable to "carriers by railroad subject to this Act"; the 1940 Act made them applicable to a "carrier by railroad subject to this part." The argument is that these changes, made in the 1920 and carried into the 1940 Act, show a continuing purpose of Congress to deprive the Commission of the power to require interchange of cars with water carriers—to detract from its authority. But we have already had occasion to say that the 1920 Act "materially extends the jurisdiction of the Commission in respect of land-and-water transportation and the carriers engaged in it, whenever property may be or is transported by rail and water by a common carrier or carriers . . . ." Chicago, R. I. & P. Ry. Co. v. United States, 274 U. S. 29, 36. This conclusion as to the scope of the 1920 Act is fully justified by its history, 206 I. C. C. *supra*, 339-343. Consequently, the 1920 changes in the language of the car service requirements do not justify the narrow interpretation of the 1940 Act which is here urged.

Sec. 1(4) of Part I of the Act imposes a duty on railroads to establish reasonable through routes with other carriers, including water carriers, and to "provide reasonable facilities for operating such routes"[6] under "reasonable rules and regulations."

Sec. 3(4) makes it the duty of railroads to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their . . . lines and connecting lines, and for the . . . forwarding . . . of . . . property to and from connecting lines," and a "connecting line" is defined to include a water carrier.

Section 15(3) supplements these sections by providing that the Commission may hold hearings, and "shall" if it deems it "necessary or desirable in the public interest, . . . establish through routes . . . and the terms and conditions upon which such through routes shall be operated."

These sections provide sufficient authorization for the Commission's order. It was from its power to require through routes that the Commission originally derived its power to require interchange of railroad cars among connecting railroads.[7] Since a rail-water through route with Seatrain cannot function without an interchange of cars, the unquestioned power of the Commission to require establishment of such routes would be wholly fruitless, without the correlative power to abrogate the Association's rule which prohibits the interchange.

Second. It is contended, and the court below held, that if the Commission has power to require railroads to interchange cars with through route connecting water carriers, it is without power to do so if a route traverses, in part, foreign waters, as Seatrain's does. This contention basically rests on paragraphs (1) and (2) of Section 1 of the Interstate Commerce Act, as amended by Sec. 400 of the 1920 Act, 41 Stat. 474, left unchanged by Part I of the 1940 Act. The language relied upon in these paragraphs declares that the provisions of Part I, relating to railroads and their transportation, shall apply "only insofar as such transportation takes place within the United States." Limiting language to the same effect is contained in the water carrier regulatory provisions of Part III of the 1940 Act.[8]

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[6] As to cars being "facilities", see Sec. 1(3)(a) of the Act, and Assigned Car Cases, 274 U. S. 564, 575, 580; Tank Car Corp. v. Terminal Co., 308 U. S. 422, 428.

[7] See note 3.

[8] Sec. 302 (i) (2) of the Act provides that the transportation subject to regulation is that " . . . partly by water and partly by railroad or motor

This Court has stated that the 1920 Act, containing this limiting clause "applies to international commerce only insofar as the transportation takes place in the United States." *Lewis etc., Co.* v. *Southern Pac. Co.*, 283 U. S. 654, 660. The question in that case was as to joint through railroad rates over a railroad route partly in the United States and partly in Mexico. The Court further said as to this situation that "The Act does not empower the Commission to prescribe or regulate such rates."[9] In *St. Louis, etc., Ry.* v. *Brownsville District*, 304 U. S. 295, this Court was called upon to consider whether, under the 1920 Act, there was a duty on the part of American railroads to furnish cars for transportation on a Mexican railroad. It was there held that in the absence of a discrimination against shippers, places, or classes of traffic within the United States, American railroads were "not bound by any law, regulation or tariff to furnish cars for transportation in Mexico." These decisions simply meant that whatever power Congress might have to regulate the conduct of its domestic companies doing business abroad,[10] it had, by the limiting provisions of the 1920 Act, expressed its purpose not to empower the Commission with general authority to regulate rail transportation in foreign countries.

But these interpretations of the 1920 Act concerning rail transportation outside the United States are of dubious relevance to the instant case. For Congress has, in Sec. 15(3) of the 1940 Act, unequivocally granted to the Commission the power to establish through joint rail-water routes, and Sec. 302(i)(2) makes this power applicable to such routes "from a place in the United States to another place in the United States."[11] Cf. *Cornell Steamboat Co.* v. *United States*, 321 U. S. 634. The reason for this grant of authority to the Commission is apparent. It is well

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vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States . . . ."

[9] Notwithstanding this, however, the Court held that where such joint rates were voluntarily fixed and charged by an American railroad, the Commission could, under the power given it by the 1920 Act, pass upon the reasonableness of the joint international rate.

[10] See Knott v. Botany Mills, 179 U. S. 69; Cunard S. S. Co. v. Melon, 262 U. S. 100, 129.

[11] The Commission denied Seatrain's petition insofar as it asked an order requiring railroads to interchange their cars for the purpose of handling freight to Cuba. 206 I. C. C. *supra*, 337; 248 I. C. C. *supra*, 118-119.

known that a substantial part of intercoastal and lake transportation among the states, in which American companies engage, traverses waters outside of the territorial limits of the United States. Foreign countries have not the same interest in this purely domestic carriage of goods, as they have in controlling the movement of railroads in their territory.[12] Such transportation must be regulated by this country if it is to be effectively regulated. Congress recognized this fact when it made special provision in Section 15(3) for the Commission to regulate water transportation from one to another place in the United States, even though that transportation took place "partly outside" the United States. It is this particular provision, made especially applicable to interstate *rail-water* transportation, by which the Commission's authority over such movements must be measured, rather than by the limiting clause of Section 1, which is applicable to the Commission's power over *railroad* transportation. There is therefore nothing in the Act to deny the Commission the same power over interstate water-rail transportation which passes through foreign waters, as we have just held it enjoys where the transit is wholly within the territorial limits of the United States. We therefore hold that the order of the Commission requiring car interchanges was within its authority as to interstate movements which take place within or without the territorial waters of the United States.[13]

Third. The Commission found that $1.00 per car per day, to be paid to the car owners while Seatrain actually had cars in its

[12] Section 1(1)(a) of Part I of the Act which contains the general clause limiting the Act's application to railroad transportation within the United States, also declares its application to transportation "from any place in the United States *through a foreign country* to any other place in the United States." This latter clause, as the District Court recognized, 55 F. Supp. *supra*, 487, would have little meaning, if the limiting clause were given the interpretation for which the railroads here contend.

[13] We have not overlooked the argument that Congress intended to take away part of the Commission's power over car interchanges by repealing subdivision (b) of Sec. 6(13) of the Act to Regulate Commerce as amended, 37 Stat. 560, 568, which reads as follows: "To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced."

This repealed provision was substantially embodied in 15(3) of the 1940 Act. We think Commissioner Eastman, then Chairman of the Legislative Bureau, made an accurate statement, when in writing the Senate-House Conference Committee considering the 1940 Act, he stated that he did not object to the repeal of 13(b) since "Other provisions of the bill adequa ely cover this matter." Omnibus Transportation Legislation, House Committee Print, 76th Congress, 3d Session, p. 23.

possession, was a reasonable compensation. Although, in practice, cars brought to the ports must sometimes wait several days for Seatrain's sailing, the Commission did not require Seatrain to make per diem payments during this waiting period. It is contended that the Commission should require Seatrain to pay for the cars from the time they are made available to it; that the rate of compensation was too low; and that in both respects, the result is to require railroads to afford Seatrain the "free use" of their property, thereby imposing a burden upon the railroads which Congress neither did nor could have authorized. *Chicago R. I. & P. Ry. Co.* v. *United States*, 284 U. S. 84, 97.

The questions thus raised depend upon a determination of facts. The findings of the Commission, discussed at length in its opinions, illustrate the complex nature of the facts involved. 237 I. C. C. 97, 101-102; 248 I. C. C. 109. Those facts need not be repeated here. The Commission not only had the benefit of the testimony offered in these proceedings, but was possessed of wide experience with the general problem of car hire. See e. g. Rules for Car Hire Settlement, 150 I. C. C. 369. We have carefully examined the record and find substantial evidentiary support for the Commission's finding "that the current code of per diem rules governing the interchange of freight cars between the defendants above referred to and other rail carriers, including the current rate of $1.00 per day payable by Seatrain for such period as the cars are in its actual possession, would be reasonable for application to the interchange of cars between defendants and complainants for use by Seatrain." 248 I. C. C. at 119. This being true we sustain the Commission's order in this respect.[14]

We find no merit in any of the other contentions raised against the order of the Commission.

The judgment in No. 47 is reversed, and the judgment in No. 48 is affirmed.

It is so ordered.

Mr. Justice ROBERTS dissents.

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[14] It is to be noted that the Commission has not foreclosed future consideration of the car hire compensation problem, insofar as it may be involved in determining railroad rates or a proper division of through rail water rates between Seatrain and the railroads. 248 I. C. C. 117; cf. Chicago R. I. & P. Ry. Co., *supra*, 97, 109, note 11.